TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 249.

GEORGE A. PETTIBONE, APPELLANT,

vs.

JASPER C. NICHOLS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

FILED APRIL 14, 1906.

(20,191.)

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1 *Petition.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Comes now the above named George A. Pettibone by his attorneys Fred Miller, John F. Nugent and Edmund F. Richardson, and complains to this Court and petitions this Court, or the Judge thereof, for the issuance of a Writ of *Habeas Corpus* herein directed to Jasper C. Nichols, Sheriff of Canyon County, State of Idaho, and for the grounds of his complaint and petition, he alleges and states:

First: That the said George A. Pettibone, in whose behalf the writ of *Habeas Corpus* is applied for here, is imprisoned and restrained of his liberty; that the name of the officer and person by whom he is so imprisoned and restrained is Jasper C. Nichols, the duly qualified and acting Sheriff of Canyon County, in said State. That said Nichols is aided and assisted by certain subordinate officers and employees in and about and around the County Jail of said

2 Canyon County, under the direction and control of said Sheriff as aforesaid, and subject only to the orders of said officers so named as aforesaid.

Second: That the facts concerning the detention, imprisonment and restraint of your petitioner, and the authority claimed by the said officers, and each of them, for such detention, restraint and imprisonment, so far as the same is known to your petitioner, is as follows, to-wit:

a. That your petitioner is a resident and citizen of the State of Colorado, and the United States of America, having his habitation and abode in the City and County of Denver in said State.

b. That he was, on the 17th day of February, A. D. 1906, and for more than five years prior thereto, an actual *bona fide* citizen and resident of said City, County and State as aforesaid.

c. That your petitioner, prior to the acts hereinafter complained of, had not been in the State of Idaho, in any way, shape or form, for a period of more than ten years theretofore.

d. That on or about the 30th day of December, A. D. 1905, one Frank Stuenenberg, as your petitioner is informed and believes, a resident and citizen of the town of Caldwell, in the County of Canyon and State of Idaho, came to his death by reason of the explosion of a bomb, the particulars of which are unknown to your petitioner. That at no time thereafter, until the occurrence of the acts herein complained of, was your petitioner within either the town of Caldwell or the County of Canyon of the State of Idaho, either in his personal bodily presence, or otherwise.

e. That on or about the 12th day of February, A. D. 1906, one Owen M. Van Duyn caused a sworn complaint made by himself to be filed in the office of one M. I. Church, Probate Judge in and for the County of Canyon and State of Idaho, which said complaint was and is in words and figures as follows to-wit:

3 In the Probate Court, County of Canyon, State of Idaho.

STATE OF IDAHO, Plaintiff,
vs.
GEORGE A. PETTIBONE, Defendant.

Complaint—Criminal.

Personally appeared before me this 12th day of February, 1906, Owen M. Van Duyn of Caldwell, Idaho, in the County of Canyon, who, first being duly sworn, complains and says:

That George A. Pettibone of Denver, Colorado, on the 30th day of December, 1905, at Caldwell, in the County of Canyon and State of Idaho, did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of his malice aforethought, in and upon Frank Steunenberg, make an assault, and the said George A. Pettibone, a certain bomb, then and there loaded with a certain destructive explosive, then and there unlawfully, wilfully, deliberately, premeditatedly and with malice aforethought did throw at and against and explode at and against the said person of the said Frank Steunenberg, and that the said George A. Pettibone with the said bomb aforesaid, by means of shooting off, discharging and exploding as aforesaid against the person of the said Frank Steunenberg aforesaid, did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of his malice aforethought, strike, penetrate, wound, injure, and inflict upon the said Frank Steunenberg, as aforesaid, one mortal wound, of which said mortal wound, the said Frank Steunenberg did die, upon the 30th day of December, 1905.

4 All of which is contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Idaho.

Said complaint- therefore prays that a warrant may issue for the arrest of said George A. Pettibone and that he may be dealt with according to law.

OWEN M. VAN DUYN.

Subscribed and sworn to before me this 12th day of February, 1906.

[SEAL.] M. I. CHURCH,
Probate Judge.

f. That thereafter and on, to-wit, the said 12th day of February A. D. 1906, the said M. I. Church, Probate Judge of said County, did issue his warrant of arrest, which said Warrant of Arrest, so issued as aforesaid, was and is in words and figures as follows, to-wit:

In the Probate Court of the County of Canyon, State of Idaho.

STATE OF IDAHO, *County of Canyon, ss:*

The People of the State of Idaho to any Sheriff, Deputy Sheriff, Constable, Marshal or Policeman of said State or of our said County:

A Complaint, Upon Oath, having this day been laid before me by Owen M. Dan Duyn charging that the crime of Murder has been committed within our jurisdiction, and accusing George A. Pettibone thereof,

5 You are therefore commanded forthwith, to arrest the above named George A. Pettibone, and bring him before me, at my office in the Court House in said County, or in case of my absence or inability to act, before the nearest and most accessible Magistrate in our said County.

Witness my hand and seal of our said Court, this 12th day of February, A. D. 1906.

[SEAL.] M. I. CHURCH,
Probate Judge.

g. That thereafter and on, to-wit., the said 12th day of February A. D. 1906, the said Owen M. Van Duyn did prepare an application for a requisition to be issued by the Governor of the State of Idaho to the Governor of the State of Colorado, which said Application for a Requisition was and is in words and figures as follows, to-wit:

Office of the Prosecuting Attorney of Canyon County, State of Idaho.

CALDWELL, IDAHO, *February 12th,* 1906.

To his Excellency the Governor of the State of Idaho.

SIR: In the matter of the State of Idaho, Plaintiff, *vs.* George A. Pettibone, defendant, now on file in the Probate Court of Canyon County, Idaho, I have the honor herewith to make application for a requisition upon the Governor of Colorado, for George A. Pettibone, who is charged in this County with the crime of felony, to-wit, murder, as will more particularly appear from the certified copy of complaint of Owen M. Van Duyn, now on file in the Probate Court of Canyon County, State of Idaho, which said certified copy of said Complaint is herewith submitted, and who, as it appears from the affidavit of myself herewith submitted, is a fugitive from justice of this State. In support of the application I enclose herewith, in duplicate, certified copies of the original complaint and Warrant of Arrest against the said George A. Pettibone, and duplicate

6 originals of this certificate, and the affidavit alleging the facts required by law to be established, and I herewith and hereby respectfully certify:

First.

That in my opinion the ends of justice require that the said George A. Pettibone be brought back to this State for trial at the public expense as a charge upon this State.

Second.

That I have, as I believe, within my reach, and will be able to produce upon the trial, evidence sufficient to secure the conviction of the said George A. Pettibone of the crime charged in the Complaint.

Third.

No other application has been made, nor has any requisition been issued for the said George A. Pettibone growing out of this transaction set out in the present exemplification of the record.

Fourth.

That the said George A. Pettibone is not now under arrest in the State of Colorado, but he is now situated, as I believe, in the City of Denver, State of Colorado.

Fifth.

That this application is not made for the purpose of enforcing the collection of a debt or for any private purpose whatever, and if the requisition hereby applied for be granted, the criminal proceedings shall not be used for any of said objects.

Sixth.

That said George A. Pettibone is charged with the crime of felony, to-wit: the murder of Frank Steunenberg, committed at Caldwell, in the County of Canyon, State of Idaho, on the 30th day of December, 1905, all of which will more particularly appear from the Complaint on file in the office of the Probate Judge of Canyon County, State of Idaho, a certified copy of which said complaint is herewith submitted, and to which reference is hereby made.

7 Seventh.

The reason why application for a requisition has not sooner been made is because the evidence connecting said George A. Pettibone with the crime charged in the complaint has just been discovered.

Eighth.

That the full name of the person for whom requisition is asked is George A. Pettibone, and the name of the person who is proposed as the agent of the State to present this requisition to the Governor of the State of Colorado is James C. Mills, Jr.

Ninth.

I name said James C. Mills, Jr. as a proper person to act and be designated as such agent, and hereby certify that he has no private

interest in the arrest of George A. Pettibone, said fugitive from justice.

I am respectfully yours,

OWEN M. VAN DUYN,
Prosecuting Attorney in and for the
County of Canyon, State of Idaho.

h. That on the said 12th day of February, A. D. 1906, the said Owen M. Van Duyn did prepare an affidavit in support of said application for a requisition, which said affidavit was and is in words and figures as follows, to-wit:

Affidavit in Support of Application for Requisition.

STATE OF IDAHO, *County of Canyon, ss:*

Owen M. Van Duyn, being first duly sworn, deposes and says that he is the duly elected, qualified and acting prosecuting attorney for the Canyon County, State of Idaho; that on the 12th day of February, 1906, he made a criminal complaint before Probate Judge M. I. Church, of Canyon County, Idaho, charging one George A. Pettibone with the crime of murder of Frank Steunenberg; that the said Probate Judge thereupon duly issued a Warrant for the ar-
8 rest of the — George A. Pettibone; that the offense of murder is in this State a felony; that affiant is reliably informed that said George A. Pettibone left the county of Canyon, and State of Idaho on or about January 1st, 1906; that he is likewise reliably informed that the said George A. Pettibone is at present in the State of Colorado; that he believes the said George A. Pettibone to be in the State of Colorado for the reason that he has been so informed by prominent and reliable citizens of the County of Ada, State of Idaho; that the said George A. Pettibone was in the State of Idaho on the date of the murder of said Frank Steunenberg; that said George A. Pettibone is a fugitive from the justice of the State of Idaho; that he request- a requisition upon the Governor of the State of Colorado for the purpose of bringing said George A. Pettibone to the county of Canyon, State of Idaho, to try him for the crime above named; that the object of having the said George A. Pettibone brought — the County of Canyon from the State of Colorado is that he may be punished for the crime with which he is charged in this County, and not for the purpose of bringing against him any civil claim, suit, action or proceeding, or for any purpose whatever except to have him answer to the crime charged against him.

OWEN VAN DUYN.

Subscribed and sworn to before me this 12th day of February, 1906.

[SEAL.] M. I. CHURCH,
Probate Judge of Canyon County, Idaho,
also Clerk of the Probate Court of Canyon County, Idaho.

i. That thereafter the said Owen M. Van Duyn did cause the said Application and the said Affidavit, so prepared as aforesaid, to be presented to the Governor of the State of Idaho.

j. That thereafter and on, to-wit, the 13th day of February A. D. 1906, such proceedings were had in the office of the Governor of the State of Colorado, requiring the arrest of the body of your petitioner, which said requisition was and is in words and figures as follows, to-wit:

9

STATE OF IDAHO,
EXECUTIVE DEPARTMENT.

The Governor of the State of Idaho to His Excellency the Governor of the State of Colorado:

Whereas, It appears from the annexed papers, duly authenticated in accordance with the laws of this State, that George A. Pettibone stands charged by Owen M. Van Duyn County Att'y of Canyon County, Idaho, with the crime of Murder committed in the County of Canyon and said State, and it having been represented to me that he has fled from justice of this State and may have taken refuge in the State of Colorado,

Now, Therefore, Pursuant to the provisions of the Constitution and Laws of the United States, in such case made and provided, I do hereby require that said George A. Pettibone be arrested and delivered to J. C. Mills, Jr., who is hereby authorized and commissioned as the Agent of the State to receive the said Fugitive, and convey him to the State of Idaho, there to be dealt with in accordance with the law.

In Testimony whereof, I have hereunto set my hand and caused to be affixed the Great Seal of State. Done at the City of Boise this thirteenth day of February in the year of our Lord one thousand nine hundred and six and of the Independence of the United States the one hundred and thirtieth.

[GREAT SEAL.] F. R. GOODING.

By the Governor:
WILL H. GIBSON,
Secretary of State.

k. That in all of those acts and doings as aforesaid the said Van Duyn and the said Governor of the State of Idaho were
10 aided, counseled and advised by one James H. Hawley, an Attorney at Law residing in Boise City, State of Idaho, County of Ada.

l. That in each and every, all and singular of said proceedings, it was well known to the said Van Duyn, the said Governor and the said Hawley, that, in truth and in fact, your petitioner was not in the State of Idaho on the 30th day of December, A. D. 1905, nor at any time near that date; that the said Van Duyn, the said Governor and the said Hawley conspired, confederated and agreed together and with each other, and with other persons to your petitioner unknown, as your petitioner is informed and believes, to avoid the constitu-

tion of the United States and the Act of Congress, made pursuant thereto, which provides for the rendition of one who is a fugitive from justice which said constitution and said Act of Congress provides for such rendition only when the person accused of an alleged crime was actually in the State where the alleged crime was alleged to have been committed; in his own corporal person at the time of such alleged commission. And for the purpose of securing the body of your petitioner at and within the State of Idaho, at all hazards, in violation of said constitution and said Act of Congress, and solely to that end, the following proceedings were connived at, devised and agreed upon, by and between the said parties as aforesaid, and others, as this petitioner is informed and believes to this petitioner unknown.

m. That as a part of the said agreement to prevent your petitioner from asserting his Constitutional rights, under Clause 2, of Section 2, of Article IV of the Constitution of the United States and the Act of Congress made pursuant thereto, the said Mills, so appointed as aforesaid, was directed to go to the State of Colorado to there present his requisition, in company with the said James H. Hawley, to the Governor of the State of Colorado, and to take such actions and proceedings in connection with the said Governor, and other persons to your petitioner unknown, under the advice and counsel of the said James H. Hawley, as would result in kidnapping and in forcibly taking the body of your petitioner from the State of Colorado and removing it to the State of Idaho in defiance of the Courts and all process of law in said State.

11 *n.* That as your petitioner is informed and believes, the said Mills and the said Hawley did arrive in the said City of Denver on Thursday the 15th day of February, A. D. 1906, at the hour of about eleven o'clock in the forenoon of said day; that they did forthwith present themselves at the office of the Governor of said State, and that there in connection with the said Governor, and others to your petitioner unknown, and in pursuance of said conspiracy, said confederacy and agreement, as aforesaid, they did further conspire, confederate and agree with the said Governor, and with others to your petitioner unknown as aforesaid, to cause the body of your petitioner to be arrested at a time and under circumstances which would and did prevent your petitioner from making any application to the Courts of the State of Colorado to test the right of the Governor to issue such requisition, or to review his acts in connection therewith, under the constitution of the United States and said Act of Congress made in pursuance thereof.

o. And to that end it was agreed by and between the said confederates and conspirators that no move should be made until some time during the night of Saturday the 17th day of February, A. D. 1906, after the business of the day had closed, after the Court had adjourned, after the judges thereof had departed to their homes, and after counsel who might otherwise have been obtained, had likewise departed to their homes, or elsewhere; that such arrest when made should be kept a secret; that the body of your petitioner should be secretly clandestinely hurried out of the State of Colorado with all

possible speed, without the knowledge of his friends or his counsel, or any one connected with him, and in defiance of his rights and with the express and avowed purpose of depriving him of the constitutional guarantees hereinafter set forth. And in this connection your petitioner avers that he was in the City of Denver, openly and above board, engaged in his business during the business hours of all day Thursday, and many days theretofore, all day Friday and all day Saturday, and was at his home in said City during each of the nights of said days, and for many nights theretofore, and notwithstanding such presence, no attempt was made to arrest your petitioner until about the hour of 11:30 o'clock P. M., when
12 the house of your petitioner was surrounded by the said confederates, or persons acting by, through or under their directions, and a raid was made thereon, and your petitioner was found in his said house, where the body of your petitioner was arrested.

p. Your petitioner further avers in this connection, that it was not the purpose of said confederates and conspirators to arrest your petitioner so early in the evening as 11:30 o'clock, but owing to the fact that a like requisition had been issued under like circumstances, for the body of one Charles H. Moyer, who had been in the City of Denver, openly and above board continuously during the days and nights of Thursday and Friday and during all of the day Saturday, and the further fact that the said Moyer was about to depart on business for the State of Dakota, on a train leaving Denver at 8.45 P. M. on Saturday, the 17th day of February, A. D. 1906, the arrest of said Moyer was effected, and thereupon the body of your petitioner was forthwith sought and arrested, and, in company with the said Moyer and one William D. Haywood, who had been arrested under like circumstances with your petitioner, he was thrown into the County jail of the City and County of Denver.

q. Your petitioner avers that every precaution was taken pursuant to said agreement and conspiracy to prevent his friends and his counsel from having any knowledge whatever of the fact of such arrest; and your petitioner further avers that no one of his friends or his counsel had any knowledge whatever of the facts of such arrest until after your petitioner had been forcibly removed from the State of Colorado, as hereinafter stated.

13 *r.* Your petitioner further avers, on his information and belief, that said answer was made pursuant to a preconceived scheme, confederation and agreement between the Governor of the said State of Colorado, and the said Hawley and the said Mills, pursuant to said previous schemes, confederation and agreement with the Governor of the State of Idaho, as aforesaid, for the express purpose of preventing the issuance of a Writ of *Habeas Corpus* to test the legality of your petitioner's detention, they and each of them well knowing that the constitution of the United States, and the Rendition Statute made in pursuance thereof were intended to be and in case a Writ of *Habeas Corpus* had issued would have been an absolute protection to the body of your petitioner, and would have prevented its removal, under the circumstances, from the State of Colorado to the State of Idaho; and said acts, and each of them, were

done with the express purpose and intent of preventing any application for or the issuance of a Writ of *Habeas Corpus* to test the legality of your petitioner's detention, and that by reason thereof and of all of the acts and things aforesaid, your petitioner was as a matter of fact, absolutely prevented from obtaining the benefit of the Writ to test the question of whether or not he was a fugitive from justice from the State of Idaho, within the meaning and intent of Clause 2, of Section 2, of Article IV of the Constitution of the United States, and Section 5278 of the Revised Statutes of the United States made pursuant thereto.

s. Your petitioner further avers that between the hours of five and six o'clock on Sunday morning the 18th day of February, A. D. 1906, the same being a non juridical day, the said Mills, acting as the State Agent of the State of Idaho, together with one Bulkeley Wells, the Adjutant General of the State of Colorado, and the Orderly of said Wells, one Meldrum, and certain armed guards, being a part of the forces of the militia of the State of Colorado, and all acting pursuant to the said conspiracy and agreement so made and entered into as aforesaid by the said Governor of the State of Idaho, the said Governor of the State of Colorado, the said James H. Hawley and the said Owen M. Van Duyn, did provide a special train
14 for the purpose of forcibly removing the body of your petitioner from the State of Colorado, and that between the hours of said day the said body of your petitioner was forcibly placed on said train, and was forthwith removed, with all possible speed to the State of Idaho; that prior to such removal and at all times after his incarceration in the jail of the city and county of Denver your petitioner requested to be allowed to communicate with his friends and his counsel and his family, and said privilege was absolutely denied to him.

t. That the said train made no stop at any considerable station on the line of travel from the City of Denver to Boise City, Idaho, but proceeded with great and unusual speed, and your petitioner was accompanied by and surrounded with armed guards, consisting of certain members of the State Militia of the State of Colorado, acting under the orders and directions of the Adjutant General of that State, who accompanied his command in person throughout the entire journey.

u. That instead of proceeding to Caldwell and of taking the body of pour petitioner before the said M. I. Church, the same was taken to Boise City, and there thrown into the Penitentiary and placed in solitary confinement in a cell in the said penitentiary, where the said body, for many days thereafter, remained in solitary confinement.

v. That for many days after said incarceration your petitioner was allowed to communicate with no one, except upon one occasion when he was permitted to hold a conversation with his attorney, within view at all times, and part of the time within hearing, of the Warden of the said penitentiary.

w. That after being held in the penitentiary from about the hour of nine o'clock A. M. on Monday the 19th day of February, A. D.

1906, until the hour of above seven o'clock A. M. of the 21st day of February, A. D. 1906, the body of your petitioner was for the first time taken before the said M. I. Church, at which time and place your petitioner had read to him the Complaint of the said Van Duyn, hereinbefore referred to and set out.

15 *x.* That thereupon your petitioner protested against the jurisdiction of the said M. I. Church for the reason that he had been forcibly removed from the State of Colorado, in violation of his Constitutional rights, and for other reasons peculiar to the Statutes of the State of Idaho, which are unnecessary to a determination of the question here presented.

y. That thereupon your petitioner was returned to the penitentiary at Boise City and reincarcerated, as aforesaid, where he remained until the 13th day of March A. D. 1906, when he was placed in the custody of the Sheriff of Canyon County, Idaho, and removed to the County Jail of said County, in the town of Caldwell, where he is now incarcerated.

z. That your petitioner is not and was not a fugitive from justice; that he was not present in the State of Idaho when the alleged crime was alleged to have been committed, nor for months prior thereto, nor thereafter, until brought into said State as aforesaid.

aa. That thereafter and on, to-wit, Friday the 23rd day of February, A. D. 1906, your petitioner presented a petition to the Supreme Court of the State of Idaho asking for a Writ of *Habeas Corpus* to test the validity of his imprisonment upon the matters and things hereinbefore set forth, in which the same matters and things were substantially alleged with respect to the said requisition proceedings as are alleged herein.

bb. That thereupon the said Supreme Court did order a Writ of *Habeas Corpus* to issue in said proceeding and did make the same returnable on Thursday the 1st day of March, A. D. 1906.

cc. That on the said first day of March, A. D. 1906, the said E. L. Whitney did make a return and did file the same in said Court, which said return was and is in words and figures as follows: to-wit:

In the Supreme Court of the State of Idaho.

In re GEORGE A. PETTIBONE.

STATE OF IDAHO, *County of Ada, ss:*

16 The Return of E. L. Whitney, Warden of the State Penitentiary of the State of Idaho, to the Writ of *Habeas Corpus* Hereto Annexed.

In obedience to the Writ of *Habeas Corpus* hereto annexed, I do hereby certify and return to the Honorable the Supreme Court of the State of Idaho, as follows:

First: That I am the duly appointed acting Warden of the State Penitentiary of the State of Idaho, situated near Boise City, and in Ada County, Idaho. That the said George A. Pettibone was at the

time of the service of said Writ, and is now, in my custody and detained by me in said State Penitentiary, and that the reasons for such detention are as follows: That on the 12th day of February, 1906, a complaint sworn to by one Owen M. Van Duyn, County Attorney of Canyon County, State of Idaho, was filed in the office of the Probate Judge of Canyon County, Idaho, charging said George A. Pettibone with the crime of murder, a copy of which said complaint is hereto annexed, made a part hereof, and marked "A." That on said day the said Probate Judge issued his Warrant of Arrest, based on said Complaint, a copy of which said Warrant, together with the return of the Sheriff of said Canyon County thereto, is hereto annexed, made a part hereof, and marked "B." That on the 18th day of February, 1906, an order was made by the Probate Court of said Canyon County, State of Idaho, in which said order was recited that the County Jail of said Canyon County was an unfit place for the detention of said George A. Pettibone, and directing that said person should be transferred to the Idaho State Penitentiary for detention, and said Penitentiary was therein designated as the place of detention for said person. That a copy of said order is hereto annexed and made a part hereof and marked "C." That on the said 18th day of February, 1906, the said George A. Pettibone was by J. C. Nichols, the qualified and acting Sheriff of Canyon County, delivered to me. That since that time the said George A. Pettibone has been detained in said penitentiary and in my custody, except that on the 21st day of February, 1906, and again on the 24th day of February, 1906, the said George A. Pettibone was, and on each of said days
17 was, by said J. C. Nichols, Sheriff as aforesaid, removed from said Penitentiary and taken to Caldwell, in Canyon County, State of Idaho, and before said Probate Judge of said Canyon County, upon matters before said Judge connected with said charge against him and was also on said 24th day of February, 1906, taken before the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County, to attend before said Court at the time of impannelling the Grand Jury, theretofore ordered to attend the session of said Court then and there being held. That upon each of said days, after having been in attendance upon said courts as aforesaid, the said George A. Pettibone was by said Sheriff brought back to said State Penitentiary, and again placed under my care.

Second: I further certify and return that I am not holding said George A. Pettibone as an inmate of said Penitentiary, and that I am not detaining him for any reason except under said order of said Probate Judge, and as an accommodation to said Sheriff of said Canyon County. That said George A. Pettibone is subject at all times to the orders of said Probate Court and said District Court, hereinbefore mentioned, and of the Sheriff of said Canyon County, and that said Sheriff is the actual custodian of said person, and removes said person from and returns him back to said Penitentiary, as by said Courts required and directed, and that my custody of said person is temporary only, and all of my acts done as such temporary

custodian of said person are done for said Sheriff, in whose custody said person really is.

Third: I further certify and return that the confinement of said George A. Pettibone in the said Penitentiary under my charge, instead of in the County Jail of said Canyon County, has been since the 21st day of February, 1906, with the assent and concurrence of said George A. Pettibone, and his attorneys, and that the officers in charge of the prosecution of said George A. Pettibone have at all times since said date been willing, if it was so desired by said George A. Pettibone to remove him from said Penitentiary, and confine him in said County Jail, until the case against him is disposed of. That a Grand Jury is now in session in said hereinbefore mentioned District Court, and amongst other things is investigating the charge against said George A. Pettibone and will, as I am informed and believe, report their conclusions upon said charge against said
18 George A. Pettibone, within the next ten days.

And I do further allege, as part of this return that the imprisonment and restraint of said George A. Pettibone is not without due process of law, and is not contrary to the provisions of the Constitution of the United States, or the Constitution of the State of Idaho.

And I now have the body of said George A. Pettibone before this Court, as I am by said Writ of *Habeas Corpus* commanded.

E. L. WHITNEY,
Warden State Penitentiary of Idaho.

STATE OF IDAHO, *County of Ada, ss:*

E. L. Whitney, being first duly sworn, deposes and says that the above return made by him is true to the best of his knowledge, information and belief.

E. L. WHITENY.

Subscribed and sworn to before me this 1" day of March, 1906.

G. G. ADAMS,
Notary Public. [SEAL.]

J. J. GUHEEN, *Att'y Gen'l,*
O. M. VAN DUYN, *Co. Att'y, Canyon Co.,*
JAMES H. HAWLEY, AND W. A. STONE,
Attorneys for E. L. Whitney.

That the exhibits referred to in said return were and are the complaint of said Owen Van Duyn and the Warrant of the said M. I. Church issued thereon, which were and are in words and figures as hereinbefore set out.

dd. That thereafter and on Thursday, the 8th day of March, A. D. 1906, and within the time allowed by the Court, your petitioner did file an answer to said return, in which he did set up the matters and things hereinbefore alleged in manner and form as herein alleged, so as to present to the said The Supreme Court of the State
19 of Idaho the question of whether or not the jurisdiction of the Courts of the State of Idaho could and would attach to the

person of a defendant whose presence had been procured in said State by the connivance, conspiracy and fraud of the executive officers of said State and in violation of his constitutional rights and the Act of Congress made pursuant thereto.

ee. That thereafter and on Friday the 9th day of March, A. D. 1906, the said return and the answer thereto came on for hearing before the Supreme Court of said State, when and where the said Whitney asked leave to file an amended and supplemental return, which was allowed, and which was and is in words and figures as follows, to-wit:

In the Supreme Court of the State of Idaho.

In re GEORGE A. PETTIBONE.

Comes now E. L. Whitney, Warden of the State Penitentiary of the State of Idaho, and by permission of the Court first had and obtained, amends his return heretofore made herein by adding after the third paragraph in the body of said return as follows, to-wit:

4. I further certify and return, that the Grand Jury of Canyon County, State of Idaho, did on the 7th day of March, 1906, find an indictment against said George A. Pettibone for the crime of murder, and charging him therein with having on the 30th day of December, 1905, in the town of Caldwell, County of Canyon, State of Idaho, unlawfully, wilfully, deliberately, premeditatedly, feloniously, and of his malice aforethought killed and murdered one Frank Steunenberg; the offence charged in said indictment being the same offence and crime charged against said George A. Pettibone in Exhibit A to the original return herein annexed; and that on said 7th day of March, 1906, said Grand Jury brought said indictment into Court, presented the same to the Court, and the said indictment was in said Court duly filed by the Clerk thereof; and a bench warrant issued thereon from said Court, and by the Clerk of said Court, in due form, which said bench warrant was duly served on said George A. Pettibone, on March 8, 1906, at said State Penitentiary, by said Sheriff of said Canyon County; and that on the 9th day of March, 1906, the said George A. Pettibone was by the Sheriff of said Canyon County taken to the said town of Caldwell wherein said Court is now sitting, and duly arraigned upon said charge contained in said indictment; and that on said day and after said arraignment, and at the request of the attorneys for the said George A. Pettibone, being the same attorneys representing him in this proceeding, said request not being opposed by the attorneys for the prosecution in said cause, the time to plead to said indictment was fixed for March 16th, 1906, in said Court; and that after said arraignment, the said George A. Pettibone was by the Sheriff of said Canyon County brought back to Ada County, State of Idaho, and again temporarily placed in my charge.

E. L. WHITNEY,
Warden of Idaho State Penitentiary.

STATE OF IDAHO, *County of Ada, ss:*

E. L. Whitney, being duly sworn, deposes and says that the foregoing amendment to the return herein is true to the best of his knowledge information and belief.

E. L. WHITNEY.

Subscribed and sworn to before me this 9th day of March, 1906.

[SEAL.] G. G. ADAMS,
Notary Public.

JOHN J. GUHEEN,
Attorney General of Idaho,
O. M. VAN DUYN,
County Attorney of Canyon Co., Idaho,
JAMES H. HAWLEY,
W. E. BORAH,
W. C. STONE,
Attorneys for E. L. Whitney.

21 To which said amended and supplemental return your petitioner filed an answer admitting the truth of the matters and things therein stated, but denying the sufficiency of such additional and supplemental return.

ff. Your petitioner further avers that thereupon the said Whitney presented a motion to strike from the answer of your petitioner all those parts, matters and things which related to the manner and method of obtaining the presence of your petitioner within the State of Idaho, which were substantially alleged in said answer as hereinbefore set out. That thereupon the said Supreme Court did hear argument upon said motion and after such argument did take the said motion under advisement.

gg. That thereafter and on, to-wit, the 12th day of March, A. D., 1906, the said Supreme Court of the State of Idaho did enter an order sustaining said motion, with an oral statement in effect that it was immaterial how the presence of the body of your petitioner came to be in the State of Idaho; that the Courts of Idaho were powerless to inquire into the manner or method by which such presence had been obtained, whatever power or authority the Courts of the State of Colorado might have had in the premises; and thereupon the said matter so relating to the said abduction and kidnapping of your said petitioner was stricken from said answer to the said return.

hh. That thereafter and on, to-wit, the said 12th day of March, A. D. 1906, an order was made by the said Supreme Court of the State of Idaho based upon the said return, the answer thereto, the amended and supplemental return, and the answer thereto, remanding the custody of your petitioner to the Idaho authorities to await trial and disposition on the said indictment of the said Grand Jury referred to in said supplemental return.

Third. That the said arrest and detention of your said petitioner, in manner and form and under the circumstances as aforesaid, is in violation of law and in derrogation of his constitutional rights in the following particulars, to-wit:

22 *a.* That said arrest and detention violates the fourth amendment to the Constitution of the United States in this, that said Article guarantees to your petitioner his right to be secure in his person against unreasonable seizure.

b. That said arrest and detention is in violation of the fifth amendment to the Constitution of the United States in this, that said amendment provides that no person shall be deprived of his life, liberty or property without due process of law.

c. That said arrest and detention was made in furtherance of a scheme of fraud and conspiracy to violate and in violation of Clause 2 of Section 2 of Article IV of the Constitution of the United States and Section 5278 of the Revised Statutes of the United States made in pursuance thereof, and that the jurisdiction of the Courts of the State of Idaho over the person of your petitioner was secured by and arises under an absolute violation of those provisions, agreed to, connived at and carried out by the Governmental officers of the State of Idaho and State of Colorado.

d. That said arrest and detention is in violation of the fourteenth amendment to the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws.

e. That the said arrest, detention, and imprisonment of your petitioner was brought about by and resulted solely from a wilful, premeditated and deliberate violation of the Constitution of the United States and the Act of Congress, and all jurisdiction of the Courts of the State of Idaho over the person of your petitioner has been acquired and is founded upon the result of that conspiracy, violation and fraud.

Fourth. That by the action of the Supreme Court of the State of Idaho, heretofore invoked as aforesaid, your petitioner has
23 been denied all manner of redress for said acts and doings in the said Courts of the State of Idaho.

Wherefore Your petitioner prays:

a. That this Court will take jurisdiction and issue its Writ of *Habeas Corpus* herein.

b. That it will direct the production of the body of your petitioner before this Honorable Court, in manner and form as required by the Statutes of the United States.

c. That upon a final hearing had therein, that it will enter an order enlarging your petitioner.

And your petitioner will ever pray.

FRED MILLER,
Residence, Spokane, Washington,
JOHN F. NUGENT,
Residence, Silver City, Idaho,
EDMUND F. RICHARDSON,
Residence, Denver, Colorado,
Attorneys for Petitioner.

STATE OF IDAHO, *County of Canyon, ss:*

George A. Pettibone Being first duly sworn, deposes and says: That he is the petitioner above named, that he has heard read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters, that he believes it to be true.

GEORGE A. PETTIBONE.

Subscribed and sworn to before me this 14th day of March, 1906.

[SEAL.] JOHN A. TUCKER,
Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County.

24 Endorsed: No. 267. In the Circuit Court of the United States for the District of Idaho, Central Division. In the matter of the application of George A. Pettibone for a writ of *Habeas Corpus*. Petition. Filed March 15th, 1906. A. L. Richardson, Clerk. Fred Miller, J. F. Nugent, and E. F. Richardson, Attorneys for Petitioner.

25 *Writ of Habeas Corpus.*

In the Circuit Court of the United States for the District of Idaho.

The President of the United States to Jasper Nichols, Greeting:

You are hereby commanded, that you have the body of George A. Pettibone by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said George A. Pettibone shall be called or charged, before the Honorable James H. Beatty acting Judge of the Circuit Court of the United States for the District of Idaho, at the United States Court-room, in Boise City, in said District, at 10 o'clock in the forenoon of Monday March 19th, 1906, to do and receive what shall then and there be considered, concerning the said George A. Pettibone and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this March 15th, 1906.

[SEAL.] A. L. RICHARDSON, *Clerk.*

I hereby certify that I received the Within Writ of *Habeas Corpus* at Boise, Idaho, on March 15th, 1906, and that I served the same upon Jasper Nichols, the identical person to whom the writ is directed, at Boise, Idaho, on March 16th, 1906, by handing to and leaving with him personally, a duplicate of the within Writ.

R. ROUNDS,
U. S. Marshal,
By W. R. BRYON, *Deputy.*

Boise, Idaho, March 16, 1906.

Endorsed: No. 267. In the U. S. Circuit Court, District of Idaho. *In re* George A. Pettibone, Petitioner. Writ of *Habeas Corpus.* Returned and filed March 16, 1906. A. L. Richardson, Clerk.

26 *Order.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Now, on the 15th day of March, A. D. 1906, the above entitled matter coming on to be heard upon the verified petition of the above named applicant for a Writ of *Habeas corpus* herein, and the Court having read the said petition, and having considered its contents, and being fully advised in the premises, upon motion of Fred Miller, John F. Nugent and Edmund F. Richardson, Counsel for the applicant and petitioner, does hereby order that a Writ of *Habeas Corpus* do issue herein against Jasper Nichols, requiring him to produce the applicant before this Court on Monday the 19th day of March A. D. 1906, at the hour of 10 o'clock A. M. then and there to do and receive and abide by what may be adjudged in that behalf by the Court.

JAS. H. BEATTY, *Judge.*

Endorsed: No. 267. In the Circuit Court of the United States District of Idaho, Central Division. In the matter of the application of George A. Pettibone for a Writ of *Habeas Corpus.* Order. Filed March 15, 1906. A. L. Richardson, Clerk.

27 *Stipulation.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting — and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Comes now the above named petitioner by his attorneys Fred Miller, John F. Nugent and Edmund F. Richardson, and the Respondent Jasper Nichols by his Attorneys James H. Hawley and William E. Borah, Esqs., and stipulate: That upon all hearings had in the above-entitled matter in the above-entitled Court, prior to the final disposition thereof, the personal presence of the applicant is hereby expressly waived, and such proceedings may be had and taken by

the Court as though he were personally present, until the rendition of the final judgment herein by said Court.

Dated at Boise, Idaho, this 15th day of March, A. D. 1906.

FRED MILLER,
JOHN F. NUGENT,
EDMUND F. RICHARDSON,
Attorneys for Petitioner.
J. H. HAWLEY,
W. E. BORAH,
Attorneys for Respondent, Jasper C. Nichols.

Endorsed: No. 267. In the Circuit Court of the United States for the District of Idaho, Central Division. In the matter of the application of George A. Pettibone for a Writ of *Habeas Corpus*. Stipulation. Filed March 15, 1906. A. L. Richardson, Clerk.

28 In the Circuit Court of the United States for the District of Idaho.

The President of the United States to Jasper Nichols, Greeting:

You are hereby commanded, that you have the body of George A. Pettibone by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said George A. Pettibone shall be called or charged, before the Honorable James H. Beatty, acting Judge of the Circuit Court of the United States for the District of Idaho, at the United States Courtroom, in Boise City, in said District, at 10 o'clock in the forenoon of Monday March 19, 1906, to do and receive what shall then and there be considered, concerning the said George A. Pettibone and have you then and there this Writ.

Witness the Honorable Melville *M.* Fuller Chief Justice of the Supreme Court of the United States this March 15th, 1906.

[SEAL.] A. L. RICHARDSON, *Clerk.*

Endorsed: No. 267. In the U. S. Circuit Court, District of Idaho. *In re* George A. Pettibone, Petitioner. Writ of *Habeas Corpus.*

29 *Answer to Writ.*

In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Central Division.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Return of Jasper C. Nichols, Sheriff of Canyon County, State of Idaho, to the Writ of *Habeas Corpus* Hereto Annexed.

In obedience to the writ of *habeas corpus* hereto annexed, I do hereby certify and return to the Honorable above Court, and allege the facts concerning this matter to be as follows and not otherwise:

1. That I am the duly elected, qualified and acting Sheriff of Canyon County, State of Idaho and have been such at all times herein mentioned.

2. That the said George A. Pettibone was at the time of the service of the above writ and is now in my custody and detained by me in the County Jail of Canyon County, State of Idaho, and that the reason for and the facts concerning the detention of said George A. Pettibone are as follows and not otherwise: That upon the 7th day of March, 1906, a Grand Jury for the County of Canyon duly empanneled, organized and empowered to enquire into all offences committed within the County of Canyon against the laws of the State of Idaho, duly found and presented an indictment against said George A. Pettibone for the crime of murder, charging him in said indictment with having on the 30th day of December, 1905, in the town of Caldwell, County of Canyon, State of Idaho, unlawfully, wilfully, deliberately, premeditatedly, feloniously, and with malice aforethought killed and murdered one Frank Steunenberg, and that a copy of said indictment is hereto attached, marked Exhibit "A" and made a part of this return.

That the offence charged in said indictment is the same offence and crime charged against George A. Pettibone in the complaint and proceedings for extradition referred to in the petition of petitioners. That the said above indictment was upon the 7th day of March, 1906, by the said Grand Jury duly brought into Court and presented to the Court and duly filed and in all respects duly presented according to law. That a Bench Warrant was thereupon issued from said Court by the Clerk of said Court in due form, which said Bench Warrant, a copy of which is hereto attached and marked Exhibit "B," was duly served on said George A. Pettibone on March 8, 1906, by the undersigned Jasper C. Nichols, Sheriff of Canyon County, State of Idaho, and that said George A. Pettibone was then and there taken in charge by the undersigned Sheriff of Canyon County, Idaho, and upon the 9th day of March, 1906, the said George A. Pettibone with his Counsel appeared in the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County, and was then and there duly arraigned upon said charge contained in said indictment; and at the request of the attorneys for said George A. Pettibone being the same attorneys representing him in these proceedings, said request not being opposed by the attorneys for the prosecution of said cause, the time to plead to said indictment was fixed for March 16, 1906, in said Court; and that after such arraignment said George A. Pettibone was remanded to the custody of the undersigned, the said Sheriff of Canyon County, and that he has ever since been and now is held in the custody of the undersigned Sheriff by reason of the indictment aforesaid and upon the Warrant issued thereon, and not otherwise.

That no trial has been had upon said indictment for the offence charged therein, and that said George A. Pettibone is now awaiting trial upon said indictment in the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County for the offence charged in said indictment, and that

he has never been admitted to bail, nor has any order of the Court or the Judge thereof been made to that effect.

3. And I further allege as a part of this return that the imprisonment and restraint of said George A. Pettibone is not without due process of law and not contrary to the provisions of the Constitution of the United States or the Constitution of the State of Idaho, and solely by reason of the indictment and proceedings thereon as aforesaid and for the purpose of detaining said George A. Pettibone for the trial upon said indictment for the offence therein alleged to have been committed.

And I now have the body of said George A. Pettibone before this Court as I am by said Writ of *Habeas Corpus* commanded.

JASPER C. NICHOLS.

STATE OF IDAHO, *County of Ada, ss:*

Jasper C. Nichols being first duly sworn, deposes and says: That the above return made by him is true to the best of his knowledge, information and belief.

JASPER C. NICHOLS.

Subscribed and sworn to before me this 19th day of March, 1906.

A. L. RICHARDSON.

O. M. VAN DUYN,
Co. Atty,
J. H. HAWLEY AND
W. A. STONE AND
W. E. BORAH,
Attorneys for J. C. Nichols,
Sheriff of Canyon County, Idaho.

32 In the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County. February Term, A. D. 1906.

STATE OF IDAHO, Plaintiff,
vs.
WILLIAM D. HAYWOOD, CHARLES H. MOYER, GEORGE A. PETTIBONE, and JOHN L. SIMKINS, Defendants.

Murder.

William D. Haywood, Charles H. Moyer, George A. Pettibone, and John L. Simpkins, are accused by the Grand Jury of the County of Canyon, State of Idaho, upon their oaths, by this indictment, found this 7th day of March, 1906, of the crime of murder committed as follows: The said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins on the 30th day of December, A. D. 1905, at the City of Caldwell, in said County of Canyon, State of Idaho, did then and there unlawfully, wilfully,

deliberately, premeditatedly, feloniously and of their and each of their malice aforethought, in and upon one Frank Steunenberg make an assault, and with a certain contrivance generally and commonly called a bomb, made out of and loaded with dynamite, giant powder caps, sulphuric acid, chloride of potash and other materials and explosives to the Grand Jury unknown, did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought, shoot off, discharge and explode said bomb at, against and upon the person of him, the said Frank Steunenberg with the intent then and there on the part of said William D. Haywood, Charles H. Moyer, George A. Pettibone, John L. Simpkins and each and every of them with the bomb aforesaid, by means of shooting off, discharging and exploding said bomb as aforesaid, did then and there unlawfully, wilfully, premeditatedly, feloniously, and of their and each of
33 their malice aforethought, strike, penetrate, injure and inflict upon the body of said Frank Steunenberg one mortal wound, of which said mortal wound so inflicted as aforesaid, the said Frank Steunenberg then and there died; whereby at the time and place and in the manner and form aforesaid, the said William D. Haywood, Charles H. Moyer and George H. Pettibone, and John L. Simpkins did, unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought, him, the said Frank Steunenberg, kill and murder.

And the said Grand Jurors aforesaid, upon their oaths aforesaid, do further present: That the said William D. Haywood, Charles H. Moyer, George A Pettibone and John L. Simpkins, unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought did on the 30th day of December, 1905, at the City of Caldwell, in the County of Canyon, State of Idaho, in and upon said Frank Steunenberg make an assault and did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought a certain deadly contrivance made out of dynamite and other explosives to the jurors unknown, and fasten together and contained in a box or other receptacle, the kind or character of which is to the jurors unknown, and which said box or receptacle containing said dynamite and other explosives the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins, unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought then and there had in their possession and under their control set off, discharge, and explode in some way or manner to the Grand Jurors unknown, at, upon and against the body of him, the said Frank Steunenberg, with the intent then and there and thereby, on the part of said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins and each and every of them, him, the said Frank Steunenberg to kill and murder; and that the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John
34 L. Simpkins, by means of setting off, and exploding the said Dynamite and other explosives in said box or receptacle had

and contained, did then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of their malice aforethought, strike, penetrate, injure and inflict upon the person of him, the said Frank Steunenberg one mortal wound of which said mortal wound so inflicted as aforesaid, the said Frank Steunenberg did then and there die; whereby at the time and place aforesaid and in the manner and form aforesaid, the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins did unlawfully, wilfully, deliberately, premeditatedly, feloniously and of their and each of the- malice aforethought him, the said Frank Steunenberg, kill and murder.

And the Grand Jurors aforesaid upon their oaths aforesaid, do further present: That the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins, unlawfully, wilfully, deliberately, premeditatedly, feloniously, and of their and each of their malice aforethought and intending thereby him, the said Frank Steunenberg, to kill and murder, did on the 30th day of December, 1905, at the City of Caldwell, in the County of Canyon, State of Idaho, place at and near a certain gate opening into and upon the land and premises used by said Frank Steunenberg as and for a residence and upon which a house occupied by said Frank Steunenberg as a residence was situate, a certain tin box containing certain explosives, to-wit ten pounds of dynamite, ninety-nine giant powder caps, chloride of potash, and sulphuric acid in bottles, in amount to the Grand Jurors unknown, together with other materials and explosives to the jurors unknown, and a more particular description of which the jurors are unable to give and so arranged and contained that upon the said gate being opened by said Frank Steunenberg a line or string so placed as to connect said box with said gate would partially turn and tilt said bottles containing said sulphuric acid and cause said acid to run out of said bottles and into, upon and over said giant powder caps, dynamite, choloride of potash and other explosives in said box contained, and thus cause the said giant powder caps, dynamite, choloride of potash and other explosives to be set off and exploded, the said William D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins, then and there well knowing that the setting off and exploding said giant powder caps, dynamite, Chloride of potash and other explosives in said box contained, in the manner aforesaid, by the said Frank Steunenberg would then and there cause the death and result in the death of him, the said Frank Steunenberg; and he, the said Frank Steunenberg, not knowing that said box was or had been so placed at or near said gate as aforesaid and not knowing that by opening said gate said articles contained in said box would be set off and exploded did on said 30th day of December, 1905, at said City of Caldwell, in said County of Canyon, and State aforesaid, open said gate opening into and upon said land and premises used by said Frank Steunenberg, as and for a residence, and upon which his residence was situate as aforesaid, and by such opening of said gate caused said line or string connecting said box containing said explosives and said gate to turn and tilt said bottles contain-

ing said sulphuric acid and caused said acid to run out of said bottles and into, upon and over said giant powder caps, dynamite, choloride of potash and other explosives in said box contained, and set off and exploded said giant powder caps, dynamite, choloride of potash and other explosives in said box contained, and set off and exploded said giant powder caps, dynamite, chloride of potash and other explosives at, upon and against the body of him, the said Frank Steunenberg, and then and there by reason of said explosion inflicted upon the body of him, the said Frank Steunenberg, one mortal wound, of which mortal wound so inflicted as aforesaid, the said Frank Steunenberg then and there died; whereby at the time and place and in the manner and form aforesaid, the said William
36 D. Haywood, Charles H. Moyer, George A. Pettibone and John L. Simpkins, did unlawfully, wilfully, deliberately, premeditatedly, and of their and each of their malice aforethought, him, the said Frank Steunenberg, kill and murder, contrary to form, force and effect of the Statutes in such cases made and provided, and against the peace and dignity of the State of Idaho.

OWEN M. VAN DUYN,
Prosecuting Attorney for said County.

Names of witnesses examined before the Grand Jury on finding the foregoing indictment: Sherman R. Macy, Wm. Everett Mosby, Harry Orchard, Andrew Johnson, W. S. Swain, Joseph Hutchinson, Mrs. Addie Martin, Mr. C. F. Wayne, Mr. Wm. W. Kepple, N. S. Ellis, D. C. Goodlow, C. A. Wood, Guy McGee, James Russell, Luther Bowman, A. Ballentyne, J. C. Nichols, C. P. Grimes, W. S. Maxey, J. W. Gue.

Names of witnesses whose depositions were read before the grand jury on finding the foregoing indictment: ——.

37 In the District Court of the Seventh Judicial District of the State of Idaho in and for Canyon County, February Term, A. D. 1906.

An indictment having been returned and filed in this Court on the 7th day of March, 1906, charging George A. Pettibone with the crime of Murder.

You are therefore commanded, forthwith, to arrest the above named George A. Pettibone and bring him before the said District Court to answer the said Indictment;

Given under my hand, with the seal of said Court affixed, this 7th day of March, 1906.

By Order Of Said Court:

[SEAL.] JOHN A. TUCKER, *Clerk.*

Endorsed: No. — In the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County. Bench warrant. Indictment. For Murder. Filed March 9th, 1906. John A. Tucker, Clerk.

38 Endorsed: No. 267. U. S. Circuit Court, District of Idaho, *In re* George A. Pettibone Answer to Writ. Filed March 19th, 1906. A. L. Richardson, Clerk.

39 *Stipulation.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Comes now the above named applicant and petitioner George A. Pettibone by his attorneys Fred Miller, John F. Nugent and Edmund F. Richardson, and comes also the defendant and respondent Jasper C. Nichols, by his Attorneys James H. Hawley and William E. Borah, and stipulate that the matters and things set forth in the return of the defendant and respondent to the Writ of *Habeas Corpus* heretofore issued herein shall be considered as true and they are hereby admitted as true as stated in the said return.

It is further stipulated and agreed that the petition of the applicant heretofore filed herein, upon which the said Writ of *Habeas Corpus* was issued, shall be taken and considered and deemed to be the applicant'- and petitioner's answer to the said return as fully to all intents and purposes as though the same were designated as an answer to said return.

Dated at Boise, Idaho, this 19th day of March, 1906.

FRED MILLER,
JOHN F. NUGENT,
EDMUND F. RICHARDSON,
Attorneys for Applicant and Petitioner.

J. H. HAWLEY,
W. E. BORAH,
Attorneys for Defendant and Respondent.

Endorsed: No. 267. *In re* George A. Pettibone. Stipulation. Filed March 19th, 1906. A. L. Richardson, Clerk.

40 *Motion to Strike Out Answer to Return.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Motion to Strike out Answer to Return.

Comes now the respondent herein and moves to strike out the answer to the return herein, upon the grounds and for the reason that said answer and the whole thereof is sham and irrelevant.

J. H. HAWLEY,
W. E. BORAH,
Attorneys for Respondent.

Endorsed: In the Circuit Court of the United States sitting in and for the District of Idaho. In the matter of the application of George A. Pettibone for a writ of *habeas corpus.* Motion to strike out answer to return. Filed March 19th, 1906. A. L. Richardson, Clerk.

41 *Demurrer to Answer to Return.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Sitting in and for the District of Idaho.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Demurrer to Answer to Return.

Comes now the respondent herein, and without waiving his motion to strike out the answer to the return herein, demurers to the answer to the return herein upon the grounds and for the reason that said answer does not state facts sufficient to constitute a defense to the allegations and showing had, made and contained in said return.

Wherefore, respondent prays to be hence dismissed without day.

J. H. HAWLEY,
W. E. BORAH,
Attorneys for Respondent.

Endorsed: In the Circuit Court of the United States sitting in and for the District of Idaho. In the matter of the application of George A. Pettibone for a writ of *habeas corpus.* Demurrer to answer to return. Filed March 19, 1906. A. L. Richardson, Clerk.

42 At a stated term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on Tuesday the 20th day of March, 1906.

Present: Hon. James H. Beatty, Judge.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus*. No. 267.

On this day the Court announced its decision in this cause heretofore argued and submitted. Ordered that the Motion to strike out the Answer to the Return to the Writ of *Habeas Corpus* herein be allowed and that demurrer to the Return to said Writ be sustained.

It is further ordered that the Writ of *Habeas Corpus* issued herein be and is hereby quashed and the said Petitioner is hereby remanded to the custody of the Respondent, Jasper C. Nichols, the Sheriff of Canyon County, State of Idaho.

To the ruling of the Court in allowing the said motion to strike out the said Answer and in sustaining the said demurrer the Petitioner by his counsel excepted in due form of law, which exception is allowed by the court.

It is further ordered that said petitioner be given ten days from this date in which to file and serve a Bill of Exceptions herein and thirty days from this date in which to file said Appeal Bond.

43 *Bill of Exceptions.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus*.

Bill of Exceptions.

Be it remembered That heretofore and on, to-wit, the 19th day of March A. D. 1906, the above entitled matter came on to be heard on the return of Jasper C. Nichols to the Writ of *Habeas Corpus* heretofore issued on the petition in the above entitled cause.

Whereupon The Plaintiff and Petitioner appeared by his counsel Fred Miller, John F. Nugent and Edmund F. Richardson, and the Defendant and Respondent appeared by his Counsel William E. Borah and James H. Hawley, Esqs., and thereupon the said counsel for the said parties entered into a stipulation in writing, and filed the same with the Clerk of the Court which was and is in words and figures as follows, to-wit:

Comes now The above named applicant and petitioner George A. Pettibone, by his attorneys Fred Miller, John F. Nugent and Edmund F. Richardson, and comes also the Defendant and Respondent Jasper C. Nichols, by his attorneys James H. Hawley and William

E. Borah, and stipulate that the matters and things set forth in the return of the defendant and Respondent to the Writ of *Habeas Corpus* heretofore issued herein shall be considered as true and they are hereby admitted as true as stated in the said return.

44 It is further stipulated and agreed That the petition of the applicant heretofore filed herein, upon which the said Writ of *Habeas Corpus* was issued, shall be taken and considered and deemed to be the applicant'- and petitioner's answer to the said return as fully to all intents and purposes as though the same were designated as an answer to said return.

Thereupon Counsel for Respondent presented their motion to strike out the answer to the return, which was and is in words and figures as follows, to-wit:

Comes now the Respondent herein, and moves to strike out the answer to the return herein upon the grounds and for the reason that said answer and the whole thereof is sham and irrelevant.

At the same time The said Counsel for the respondent likewise presented their demurrer to the answer to the return, which said demurrer was and is in words and figures as follows, to-wit:

Comes now the Respondent herein, and without waiving his motion to strike out the answer to the return herein, demurrers to the answer to the return herein upon the grounds and for the reason that said answer does not state facts sufficient to constitute a defense to the allegations and showing made, had and contained in said return.

And thereupon and on the same day, to-wit, the 19th day of March, A. D. 1906, argument proceeded upon the said motion and the said demurrer to the said answer to the said return, and, after argument, the Court not being fully advised in the premises did take the same under advisement.

Be it further remembered That on the 20th day of March, A. D, 1906 the said matter further coming on to be heard upon the said return, the said answer thereto and the said motion and demurrer to the said answer as aforesaid, and the Court being fully advised in the premises did consider and order that the said motion and demurrer and each of them be sustained, to which order and ruling of the Court sustaining the said motion and the said demurrer, and each of them, the petitioner by his counsel then and there excepted, and such exception was then and there allowed by the Court.

45 Be it further remembered That on said last mentioned day the Court did further order that final judgment be entered dismissing the said Writ and remanding the prisoner, petitioner and plaintiff to the custody of the respondent to which final judgment, order and ruling of the Court so dismissing the said Writ and so remanding the said petitioner, plaintiff and prisoner to the custody of the respondent, counsel for the said petitioner, plaintiff and prisoner did then and there except and such exception was allowed.

Whereupon The said Petitioner asked and was given a period of ten days from and after the said 20th day of March, A. D. 1906, within which to prepare and tender his Bill of Exceptions by him re-

served in the progress on said matter as allowed; and thereupon the petitioner prayed an appeal to the Supreme Court of the United States, the prayer of which said appeal was allowed, conditioned upon the filing of a good and sufficient bond, with sureties to be approved by the Clerk of this Court, in the sum of Five Hundred Dollars, for the prosecution of said appeal; and inasmuch as all of the matters and things hereinbefore recited do not fully appear of record herein, The Petitioner, Plaintiff and Prisoner presents this his Bill of Exceptions within the time allowed by the Court and asks that the same may be signed, sealed and allowed as such Bill of Exceptions which is accordingly done this — day of March, A. D. 1906.

JAS. H. BEATTY, *Judge.* [SEAL.]

O. K.
J. H. HAWLEY,
W. E. BORAH,
Counsel for Respondent.

Endorsed: No. 267. *In re* George A. Pettibone. Bill of Exceptions. Filed March 21, 1906. A. L. Richardson, Clerk.

46 *Petition on Appeal.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Petition on Appeal.

To the Honorable James H. Beatty, District Judge and one of the Judges of the aboce named Court presiding therein:

The above named complainant and petitioner in the above entitled matter, George A. Pettibone, conceiving himself aggrieved by the order, decree and judgment made and entered by the above named Court in the above entitled cause, under date of March 20, A. D. 1906, wherein and whereby, among other things, it was ordered that the motion to strike out the answer to the return to the Writ of *Habeas Corpus* should be sustained, that the demurrer to said answer to said return should also be sustained and that the said Writ should be dismissed and that the above named complainant and petitioner should be remanded to the custody of the respondent Jasper C. Nichols, Sheriff of Canyon County, Idaho, does hereby appeal to the Supreme Court of the United States from said orders, decree and judgment, and each and every part thereof, as aforesaid, for the reason set forth in the Assignment of Errors herewith, and he prays that this his petition for his said appeal may be allowed

and that a transcript of the records, proceedings and papers upon which said orders were made, duly authenticated, may be sent to the Supreme Court of the United States within the time limited
47 by law.

Dated April 4, A. D. 1906.

FRED MILLER,
JOHN F. NUGENT,
Silver City. Ida.
EDMUND F. RICHARDSON,
Attorneys for Petitioner and Complainant.

Order.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed.

Done in open Court this 4th day of April, A. D. 1906.

JAS. H. BEATTY,
District Judge and one of the Judges of said United States Circuit Court Presiding Therein.

Endorsed: No. 267. In the Circuit Court of the United States sitting in and for the District of Idaho. *In re* the application of George A. Pettibone, for a Writ of *Habeas Corpus.* Petition on Appeal. Filed April 4th, 1906. A. L. Richardson, Clerk. Fred Miller, John F. Nugent, Silver City, Ida. Edmund F. Richardson, Att'ys for Petitioner.

48 *Assignment of Errors.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Assignment of Errors.

Comes now The above named Applicant and Petitioner and files herewith his petition for a Writ of Error, and alleges that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States he makes the following assignments:

First: The Circuit Court of the United States erred in sustaining the motion to strike out the answer of the complainant and petitioner to the return of the respondent Jasper C. Nichols, Sheriff of Canyon County, against exception saved and allowed.

Second: That the Court erred in sustaining the demurrer of the respondent Jasper C. Nichols to the answer of the complainant and

petitioner to the return of the said Jasper C. Nichols against exception saved and allowed.

Third: That the Court erred in quashing and dismissing the Writ of *Habeas Corpus* theretofore issued in said cause against exception saved and allowed.

Fourth: That the Court erred in remanding the Complainant, Petitioner and Prisoner to the custody of the Respondent
49 Jasper C. Nichols, Sheriff of Canyon County, upon the record and proceedings in said cause against exception saved and allowed.

For which errors The complainant and petitioner prays that the orders and judgment of the said Circuit Court of the United States, sitting in and for the District of Idaho, may be reversed, vacated, set aside and for nought held, and that a judgment may be ordered to be entered sustaining the said Writ of *Habeas Corpus,* and enlarging the Complainant and Petitioner.

FRED MILLER,
JOHN F. NUGENT,
Silver City, Ida.,
EDMUND F. RICHARDSON,
Attorneys for Complainant and Petitioner.

Endorsed: No. 267. *In re* Application of George A. Pettibone, for a Writ of *Habeas Corpus.* Assignment of Errors. Filed April 4th, 1906. A. L. Richardson, Clerk.

50 *Order Fixing Amount of Bond.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

The Petitioner and Complainant Having this day filed his petition for an appeal from the decision, orders and judgment of this Court heretofore made and entered herein, to the Supreme Court of the United States, together with an assignment of errors, within due time, and also praying that an order may be made fixing the amount of security which petitioner should give and furnish upon said appeal, and said petition having this day been duly allowed.

Now, therefore, It is ordered that said appeal be allowed upon the said petitioner filing with the Clerk of this Court a good and sufficient bond in the sum of Five Hundred Dollars, within thirty days from date hereof, to the effect that if the said petitioner and complainant shall prosecute his said appeal to effect and answer all damages and costs if he fails to make his plea good, then the said obligation to be void, else to remain in full force and virtue, the said bond to be approved by this Court.

Dated at Boise, Idaho, this 4th day of April, A. D. 1906.

JAS. H. BEATTY, *Judge.*

51 Endorsed: No. 267. In the Circuit Court of the United States Sitting in and for the District of Idaho. *In re* the Application of George A. Pettibone for a Writ of *Habeas Corpus*. Order Fixing Amount of Bond, etc. Filed April 4, 1906. A. L. Richardson, Clerk. Fred Miller, John F. Nugent, Silver City, Idaho, Edmund F. Richardson, Attorneys for Petitioner.

52 *Bond on Appeal.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the Circuit Court of the United States, Sitting in and for the District of Idaho (Central Division).

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus*.

Bond on Appeal.

Know all men by these presents That we, George A. Pettibone as principal, and Timothy Regan and Albert B. Kohny, as sureties, are held and firmly bound unto Jasper C. Nichols in the full and just sum of Five Hundred Dollars, to be paid to said Jasper C. Nichols, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 3rd day of April, in the year of our Lord one thousand nine hundred and six.

Whereas Lately at a session of the Circuit Court of the United States for the Central Division of Idaho, in a suit pending in said Court wherein the said George A. Pettibone was the petitioner and complainant and Jasper C. Nichols was the respondent, a judgment, order and decree was rendered quashing and dismissing the Writ of *Habeas Corpus* theretofore issued in said cause, and remanding the custody of the complainant and petitioner to the said Jasper C. Nichols, and,

Whereas: The said George A. Pettibone has obtained an order from said Court allowing an appeal to the Supreme Court of
53 the United States to reverse the judgment and decree aforesaid, and,

Whereas A Citation directed to the said Jasper C. Nichols is about to be issued citing and admonishing him to be and appear at the Supreme Court of the United States,

Now, the condition of the above obligation is such That if the said George A. Pettibone shall prosecute his said appeal to effect and shall answer all damages and costs that may be awarded against him if he fails to make his plea good, then the above obligation to be void, otherwise to remain in full force and vitrue.

GEORGE A. PETTIBONE. [SEAL.]
TIMOTHY REGAN. [SEAL.]
ALBERT B. KOHNY. [SEAL.]

The sufficiency of the sureties on the foregoing appeal bond is hereby approved this 4th day of April, 1906.

JAS. H. BEATTY, *Judge.*

STATE OF IDAHO, *County of Ada, ss:*

Timothy Regan and Albert B. Kohny being duly sworn, each for himself says that he is a resident and free holder or house holder in the City of Boise, and County of Ada, State of Idaho, and that he is worth the amount for which he becomes liable as surety on the foregoing bond, over and above all his debts and liabilities, in unincumbered property situated within this State, over and above all just debts and liabilities, exclusive of property exempt from execution.

TIMOTHY REGAN.
ALBERT B. KOHNY.

Subscribed and sworn to before me this 3rd day of April, 1906.
[SEAL.] SHERMAN G. KING,
Notary Public.

54 Endorsed: No. 266. In the Circuit Court of the United States, Sitting in and for the District of Idaho. *In re* the Application of George A. Pettibone for a Writ of *Habeas Corpus.* Bond on Appeal. Filed April 4th, 1906. A. L. Richardson, Clerk. Fred Miller, John F. Nugent, Silver City, Idaho, Edmund F. Richardson, Attorneys for Petitioner.

55 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable James H. Beatty, the Judge of the District Court of the United States sitting as the Judge of the Circuit Court of the United States for the District of Idaho, Central Division, Greeting:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, between George A. Pettibone as complainant and petitioner and Jasper C. Nichols as respondent and defendant in error, a manifest error hath happened to the great damage of said George A. Pettibone, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in that behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this Writ, so that you have the same at the City of Washington on the 2d day of May next, in said Supreme Court; that the records and proceedings aforesaid being inspected the said Supreme Court may cause further to be done there in correcting that

error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, the 4 day of April in the year of our Lord one thousand nine hundred and six.

[Seal United States Circuit Court Idaho.]

A. L. RICHARDSON,
Clerk of the United States Circuit Court for the District of Idaho (Central Division).

Allowed by
JAS. H. BEATTY,
District Judge.

56 Service of the within Writ of Error and receipt of a copy thereof is hereby admitted this 4th day of April, 1906.

JAMES H. HAWLEY AND
W. E. BORAH,
Attorneys for Respondent.

57 [Endorsed:] No. 267. (Original) *In re* the application of George A. Pettibone for a Writ of *Habeas Corpus* Writ of Error Filed April 4th 1906, A. L. Richardson Clerk.

58 UNITED STATES OF AMERICA, *ss:*

Citation.

The President of the United States to Jasper C. Nichols and his Attorneys, James H. Hawley and William E. Borah, Esquires, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the District of Idaho, Central Division, wherein George A. Pettibone is complainant and petitioner and you are defendant and appellee, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America this 4 day of April, A. D., 1906, and of the Independence of the United States the one hundred and thirtieth.

[Seal United States Circuit Court, Idaho.]

J. H. BEATTY,
United States District Judge Presiding in the Circuit Court.

Attest:
A. L. RICHARDSON, *Clerk.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

59 I hereby certify That I served the within citation on Jasper C. Nichols, the defendant and appellee therein named on the 4th day of April, 1906, at Boise, County of Ada, in the District of Idaho, by then and there delivering to the said Jasper C. Nichols a true copy of the within citation; and I further certify that I served the within citation on the within named W. E. Borah and James H. Hawley, attorneys for the said defendant, on the 4th day of April, 1906, at the City of Boise, in the County of Ada, in the District of Idaho, by then and there delivering to the said W. E. Borah and the said James H. Hawley personally a true copy of the within citation.

Dated at Boise, in the District of Idaho, this 4th day of April, 1906.

R. ROUNDS,
United States Marshal,
By W. R. BRYON, *Deputy.*

Marshal's Fees $12.00.

60 [Endorsed:] No. 267, (Original). *In re* the Application of George A. Pettibone for a Writ of *Habeas Corpus.* Citation. Filed April 4th, 1906. A. L. Richardson, Clerk. Fred Miller, John F. Nugent, Silver City, Idaho, Edmund F. Richardson, Att'ys for Petitioner. R. 240 Civ., 4/4-06.

61 *Return to Writ of Error.*

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said Supreme Court of the United States and the same is transmitted accordingly.

[Seal United States Circuit Court, Idaho.]

Attest: A. L. RICHARDSON, *Clerk.*

62 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

In the United States Circuit Court, Ninth Judicial Circuit, District of Idaho.

In the Matter of the Application of GEORGE A. PETTIBONE for a Writ of *Habeas Corpus.*

Clerk's Certificate.

I, A. L. Richardson, Clerk of the Circuit Court of the United States, in and for the District of Idaho, do hereby certify the fore-

going transcript of pages numbered from 1 to 62 inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled matter, which together constitute the transcript of the record and return to the annexed Writ of Error.

I further certify that the cost of the record herein amounts to the sum of $44.50, and that the same has been paid by the Plaintiff in error.

Witness my hand and the seal of said Circuit Court affixed at Boise, Idaho, this 5th day of April, 1906.

[Seal United States Circuit Court, Idaho.]

A. L. RICHARDSON, *Clerk.*

Endorsed on cover: File No. 20,191. Idaho C. C. U. S. Term No. 249. George A. Pettibone, appellant, *vs.* Jasper C. Nichols. Filed April 14", 1906. File No. 20,191.

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

Office Supreme Court U.
FILED
APR 16 1906
JAMES H. McKENNEY,

No. [redacted]249

GEORGE A. PETTIBONE, APPELLANT,

vs.

JASPER C. NICHOLS.

No. [redacted]250

CHARLES H. MOYER, APPELLANT,

vs.

JASPER C. NICHOLS.

AND

No. [redacted]251

WILLIAM D. HAYWOOD, APPELLANT,

vs.

JASPER C. NICHOLS.

MOTION TO ADVANCE.

EDMUND F. RICHARDSON,
Counsel for Appellants.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 21191

(20,191, 20,192, and 20,193.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 689.

GEORGE A. PETTIBONE, APPELLANT,

vs.

JASPER C. NICHOLS.

No. 690.

CHARLES H. MOYER, APPELLANT,

vs.

JASPER C. NICHOLS,

AND

No. 691.

WILLIAM D. HAYWOOD, APPELLANT,

vs.

JASPER C. NICHOLS.

MOTION TO ADVANCE.

Come now the above-named appellants, by their attorney, Edmund F. Richardson, and move this court to advance these causes on the docket of this court and to set the same for final argument at the earliest possible moment, and for the grounds of their motion they allege and state:

FIRST. That they are now, and ever since the nineteenth day of February, A. D. 1905, have been, unlawfully deprived of their liberty by the appellee in the above-entitled matters, and have been constantly incarcerated, either in the State penitentiary at the city of Boise, county of Ada and the State of Idaho, or in the county jail of Canyon county or the county jail of Ada county, in the State of Idaho.

SECOND. That such deprivation of their liberty was brought about by the violation of and continues in violation of the rights of these appellants as citizens of the United States, in this, that the bodies of the appellants were arrested and are detained in violation of clause 2 of section 2 of article 4 of the Constitution of the United States and section 5278 of the Revised Statutes made in pursuance thereof, all of which will more fully appear by an examination of the records heretofore lodged herein and which are hereby asked to be made a part hereof.

THIRD. That these appellants have heretofore sought and obtained writs of *habeas corpus* from the circuit court of the United States sitting in and for the central division of the State of Idaho; that a hearing has been had on the returns to said writs and the answers thereto, and that upon final hearing herein the said writs were discharged and the bodies of the appellants remanded to the custody of the said Jasper C. Nichols, in violation of the said appellants' rights as aforesaid; all of which more fully appears from the said records now lodged with the clerk of this court on appeal from said action of the said circuit court.

FOURTH. That theretofore and prior to the procuration of the said writs from the said circuit court these appellants had sought and obtained writs of *habeas corpus* from the supreme court of the State of Idaho, which said writs came on to be heard on the returns and the answers thereto, and after such

hearing and prior to the application in said circuit court the said writs are discharged by the said supreme court and the custody of the bodies of your petitioners were remanded; all of which will more fully appear from the transcripts of said proceedings, certified by the clerk of the said supreme court of the said State of Idaho pursuant to a writ of error duly sought, obtained, and perfected from this court to the said supreme court of the State of Idaho and hereafter to be filed in this court.

Wherefore these appellants pray that this court will take cognizance of this motion and advance these causes and set the same for hearing before the final adjournment of this term of this court. Failing so to do, these appellants will be compelled to remain in such unlawful custody as aforesaid until such hearing can be had.

EDMUND F. RICHARDSON,
Attorney for Appellants.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Office Supreme Court U. S.
FILED
SEP 15 1906
JAMES H. McKENNEY, Clerk.

No. 249.

GEORGE A. PETTIBONE, APPELLANT,
vs.
JASPER C. NICHOLS.

No. 250.

CHARLES H. MOYER, APPELLANT,
vs.
JASPER C. NICHOLS.

No. 251.

WILLIAM D. HAYWOOD, APPELLANT,
vs.
JASPER C. NICHOLS.

BRIEF AND ARGUMENT FOR APPELLANTS.

JOHN H. MURPHY,
CLARENCE S. DARROW,
EDMUND F. RICHARDSON,
Counsel for Appellants.

(20,191, 20,192 and 20,193.)

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 249.

GEORGE A. PETTIBONE, APPELLANT,

vs.

JASPER C. NICHOLS.

No. 250.

CHARLES H. MOYER, APPELLANT,

vs.

JASPER C. NICHOLS.

No. 251.

WILLIAM D. HAYWOOD, APPELLANT,

vs.

JASPER C. NICHOLS.

BRIEF AND ARGUMENT FOR APPELLANTS.

STATEMENT OF THE CASE.

The appellant, Charles H. Moyer, is now, and for some years last past has been the president of the Western Federation of Miners, a labor organization

having its headquarters in the city of Denver, in the state of Colorado.

The appellant, William D. Haywood, is now, and for some years last past has been the secretary-treasurer of the said organization, and

The appellant, George A. Pettibone, is an honorary member of said organization, and was at ~~one~~ time a member of its executive board.

Each one of the appellants has appealed from an order denying him any relief under a habeas corpus proceeding instituted by him and carried to final judgment in the Circuit Court of the United States for the District of Idaho.

Each one of the appellants has likewise sued out and perfected a writ of error from this court to the Supreme Court of the state of Idaho, from a final judgment rendered in a habeas corpus proceeding instituted by the respective appellants in that court. These latter causes are numbered on the docket of this court respectively as No. 265, No. 266, and No. 267, for the October term, 1906.

The questions presented by the above series of causes are the same, and a stipulation has been filed in those here on writ of error, that they, and each of them shall abide and be governed by the opinion and judgment of this court to be rendered in the foregoing causes.

The applications for writs of habeas corpus in both courts were founded upon the following conditions of fact:

On the 30th day of December, A. D. 1905, one Frank Steunenberg, ex-governor of the state of Idaho, then a resident of the town of Caldwell in the county

of Canyon, in that state, came to his death as he was returning home on the evening of that day, by the explosion of a bomb.

It is conceded that no one of the appellants and plaintiffs in error was present in the state of Idaho at that time, nor for some months prior thereto, in the case of Moyer, and some years prior thereto in the cases of Haywood and Pettibone. (Transcript, page 1, paragraph 2, sub. c.)

On the 12th day of February, 1906, one Owen M. Van Duyn, the regularly elected, duly qualified and acting county attorney of the county of Canyon, filed a sworn complaint in the office of the probate judge of Canyon county, charging the appellants and plaintiffs in error with the commission of the crime of murder against the person of said Frank Steunenberg, by reason of the discharge of said bomb. (Page 2.)

On the same day the probate judge issued his warrants of arrest against the appellants and plaintiffs in error. On the same day Mr. Van Duyn prepared a petition directed "To His Excellency the Governor of the state of Idaho," seeking a requisition on the governor of the state of Colorado, for the arrest of the appellants and plaintiffs in error in which he certified that the application for a requisition had not sooner been made because the evidence connecting the appellants and plaintiffs in error with the crime charged, had just been discovered. (Paragraph 7, page 4.)

At the same time he prepared and filed with the petition an affidavit in support thereof. (Page 5.)

In this affidavit Mr. Van Duyn took a solemn oath "that the said (appellants and plaintiffs in error) were in the state of Idaho on the date of the murder of said Frank Steunenberg," and that they were fugitives from the justice of the state of Idaho.

Upon the application and the affidavit so presented, the governor of the state of Idaho issued a requisition purporting on its face to be "pursuant to the provisions of the constitution and laws of the United States in such case made and provided." (Page 6.)

In this requisition he designated Mr. J. C. Mills, Jr., as the agent of the state of Idaho to receive the said appellants and plaintiffs in error as fugitives, pursuant to the request contained in the ninth paragraph of the application. (Pages 4, 6.)

It is charged in paragraph k of the second subdivision of the petition for the writ that in all of the acts and doings of the governor of the state of Idaho and of the county attorney of Canyon county, they were aided, counseled and advised by one James H. Hawley, an attorney at law, residing at Boise City. (Page 6.)

It is charged and admitted in paragraph f, that in each and every, all and singular of said proceedings, it was well known to the said Van Duyn, the said governor and the said Hawley, that in truth and in fact the petitioners for the writ were not, nor were any of them in the state of Idaho on the 30th day of December, A. D. 1905, nor at any time near that date, and so knowing the fact to be, the said Van Duyn, the said governor and the said Hawley conspired, confederated and agreed together and with each other, and

with other persons, to the petitioners unknown, to avoid the Constitution of the United States and the act of congress made pursuant thereto, which provide for the rendition of those who are fugitives from justice, only when those who are accused of an alleged crime were actually in the state where the alleged crime was alleged to have been committed, each in his own corporeal person, at the time of said alleged commission.

The terms of the conspiracy are then set forth. It is charged, in effect, that the governor, the prosecuting attorney and the special counsel, Mr. Hawley, were well aware of the terms of the constitutional provision and the act of congress and that in order to prevent the assertion of the rights of the petitioners in the state upon which the requisition was being made, it was agreed that Mills and Hawley should take the requisition to the governor of the state of Colorado and there enter into a further conspiracy with the governor of that state to use the forms of law for the purpose of kidnapping and forcibly taking the bodies of the appellants and plaintiffs in error from the state of Colorado and removing them to the state of Idaho in defiance of the courts of the state of Colorado. (Par. 2, sub. m, page 7.)

Mills and Hawley did arrive at the capitol of the state of Colorado on the 15th day of February at the hour of eleven o'clock in the forenoon, and on the same day they perfected the conspiracy with the governor of the state of Colorado, which had theretofore been agreed upon, between the governor of the state of Idaho and Van Duyn and Hawley. (Sub. n, par 2, page 7.)

This agreement contemplated the arrest of the appellants and plaintiffs in error, under circumstances which would, and did, prevent any application to the courts of the state of Colorado. The conspirators took no action on Thursday towards said arrest, no action on Friday following, nor until late in the evening of the night of Saturday, the 17th day of February, when long after the business of the day had closed, and the courts had adjourned and the judges thereof had departed to their homes and counsel, whose aid might have been invoked, were scattered, the bodies of the petitioners were secretly arrested and secretly and clandestinely hurried out of the state of Colorado.

During all of the time while these conspirators were perfecting their plan, the appellants and plaintiffs in error were engaged in their business, openly and above board, in said city, and could easily have been arrested at any time after the arrival of Mills and Hawley in said city. Moyer was arrested about 8:45 o'clock in the evening; Haywood was arrested about the hour of 9:30 o'clock, and Pettibone was arrested about the hour of 11:30 o'clock. They were taken to the county jail of the city and county of Denver, they were there incarcerated, and every precaution was taken to prevent their friends or their counsel from having any knowledge whatever of the fact of such arrest. (Par. 2, sub. o, page 8.)

It is charged, and by the demurrer admitted, that each one of the conspirators knew that if a writ of habeas corpus was issued and a hearing had thereon, the requisition would be unavailing and the prisoners would be discharged, and that all of the acts and proceedings were for the express purpose of preventing

any knowledge of their arrest or imprisonment, until after they could be gotten out of the state of Colorado, so that no writ could issue, and every precaution was taken so that if by any means a writ should issue, it would have been wholly disregarded by these conspirators and each of them.

Pending the arrest, steps were taken to provide a special train, which was secured, so that between the hours of five and six o'clock on the morning of the 18th day of February, the appellants and plaintiffs in error were taken by the agent of the state of Idaho, the adjutant general of the state of Colorado, his orderly and certain members of the militia of the state of Colorado, and they were put on board said train and forcibly removed from the state of Colorado, in defiance of their rights and of any judicial process, which might have been issued. (Paragraph 2, sub. s, page 9.)

For the purpose of avoiding any writ which might have been issued through any county in the states of Colorado or Wyoming, through which the said train ran, it was further provided that the train should make no stop at any considerable station on the line of travel, from the city of Denver to Boise city, but that it should proceed, and did proceed, with great and unusual speed, so accompanied by the said armed guards, consisting of the members of the militia of the state of Colorado acting under the personal orders and directions of the adjutant general of that state.

The bodies of the appellants were not taken before the probate judge of Canyon county, who had issued the original warrants for their arrest, upon the original complaints which had been filed as by law

required, but they were taken to Boise City, in another county, and there thrown into the penitentiary, a place for condemned felons only, and after being so thrown into said penitentiary they were placed in solitary confinement, in separate cells, where they remained for many days thereafter, allowed to communicate with no one, except upon one occasion, when their attorney was allowed to visit with them, but only under the personal supervision, and, part of the time, within the hearing of the warden of that penitentiary (sub. v, paragraph 2, page 9). The bodies of the appellants and plaintiffs in error remained in said penitentiary from the 19th day of February, 9 o'clock a. m., until the 13th day of March, when their custody was transferred to the sheriff of Canyon county, and they were removed to the county jail of that county. On the 23d day of February, the appellants and plaintiffs in error filed their petitions in the Supreme Court of the state of Idaho asking for a writ of habeas corpus to test the validity of their imprisonment, upon a statement of facts precisely similar to those set forth in the petition in this case. That court took jurisdiction, ordered the writ to issue, making the same returnable on the 1st day of March, and on that date the warden of the penitentiary filed a return, which is set forth on pages 10, 11 and 12 of the transcript. In this return the warden of the penitentiary claimed to be acting simply as the agent of the sheriff of Canyon county, the appellee herein, and on the day of the hearing upon the return and the answer thereto, which embraced the facts set forth in the petition, the respondent asked leave to file an amended and supplemental return, which

was allowed. This supplemental return showed that a grand jury, sitting in the county of Canyon, on the 7th day of March, did find an indictment for murder against the appellants and plaintiffs in error for the killing of the said Steunenberg. To the amended and supplemental return, an answer was filed admitting the truth of the matters and things therein stated, but denying the sufficiency thereof. Thereupon a motion was presented to strike from the answer all of those parts, matters and things hereinbefore and therein stated which related to the manner and method of obtaining the possession of the persons of the appellants and plaintiffs in error within the state of Idaho. An argument was heard in the Supreme Court on that motion, and it was taken under advisement.

On the 12th day of March, A. D. 1906, the Supreme Court of Idaho sustained the motion, dismissed the writs and remanded the prisoners. Thereafter, that court, speaking through Mr. Justice Ailshie, handed down its written opinion, which is printed herewith as an appendix to this brief.

On the 15th day of March, A. D. 1906 (page 16), the appellants and plaintiffs in error filed their petition for a writ of habeas corpus in the office of the clerk of the United States Circuit Court, sitting in and for the district of Idaho in the central division thereof, in which they reiterated the matters and things set up in their petitions for writs of habeas corpus to the Supreme Court of the state of Idaho, together with the action of that court, and thereby invoked the independent judgment of the Circuit Court of the United States, upon the unlawfulness of their de-

tention. The writ was allowed and issued (page 17) against Jasper Nichols, who, as it was alleged, was the real custodian of the prisoners at all times after their arrival within the state of Idaho, the warden of the penitentiary, Mr. Whitney, claiming to act simply as his agent in such detention. Thereupon Mr. Nichols filed his return, setting up the indictment which had been found by the grand jury (pages 19, 20, 21, 22 and 23).

Thereupon a stipulation was entered into that the matters and things set forth in the return should be considered as true, and that the petitions upon which the writs had been issued should be taken and considered and deemed to be the answers to the return, as fully, to all intents and purposes, as though the same were designated as answers to such return. (Page 24.)

Thereupon the respondent moved to strike out the answers as sham and irrelevant and demurred to them as immaterial. These motions and demurrers were heard together, and after such hearing the motions and demurrers were sustained, the writs were quashed and the prisoners were remanded. A bill of exceptions was allowed and filed, an appeal was taken, the petition for which was accompanied by an assignments of errors, the penalty of the bond was fixed, the bond was filed and transcripts were in due time lodged in this court, so that we now have here for the consideration of the court, three writs of error on three separate petitions, proceeding to final judgment in the Supreme Court of the state of Idaho, and three appeals from the order and decree on three separate

petitions made to the Circuit Court of the United States in and for the district of Idaho.

SPECIFICATIONS OF ERROR.

We specify as error, the rulings of the Circuit Court of the United States in the following particulars:

First. In sustaining the motion to strike out the answers to the return of the respondents.

Second. In sustaining the demurrers of the respondents to the answers of the plaintiffs in error.

Third. In quashing and dismissing the writ of habeas corpus theretofore issued in each of said causes, and

Fourth. In remanding the plaintiffs in error to the custody of the sheriff of Canyon county.

BRIEF AND ARGUMENT.

We have authority for saying that these cases are *sui generis*. The Supreme Court of the state of Idaho (see appendix) used this language, in their opinion:

> "No case has been called to our attention, and, in fact, we have been unable to find any instance where the prisoner has alleged as a ground for his discharge, a like state of facts to those set up in the answer in this case, and to which the motion is here directed."

It is safe to say that there is not in all the books a single instance of so flagrant a malfeasance of political and executive duty as that which this court is now called upon to consider.

Cases may be found where the executives of the different states have been imposed upon in the granting of requisitions; cases may be found where affidavits, which were false, in fact, have been filed, upon which requisition papers have been issued; cases may be found where private parties have kidnaped those who were charged with crime in another state and have forcibly removed them to that state; cases may be found where defendants have sought the aid of the courts of the demanding state in habeas corpus and have been denied, but no case has ever heretofore existed where the executives thereof, or either of them, have participated in and have been aware of the concoction of an affidavit which was false in fact, upon which to base a requisition proceeding, so that the courts of a demanding state may acquire jurisdiction of the person of one who was not in fact a fugitive from justice. We have here presented for the consideration and determination of this court for the first time, a state of facts which, under the opinion of the Supreme Court of the state of Idaho, authorizes the executive of that state to actually perpetrate a fraud upon the law, in order that the courts of Idaho may acquire jurisdiction of the persons of these defendants, which they would otherwise have never secured.

We have presented here, a state of facts showing that the governor of the state upon whom the demand was made, had full knowledge of the falsity of the

proceedings, and with such knowledge of that falsity, actually engaged in a conspiracy to remove citizens of his own state to another state, and actually furnished the military forces of his state to aid in the accomplishment of that purpose.

It is well for this court to pause and consider the enormity of the charge here made. The demurrer filed in the Circuit Court admits absolutely and without equivocation the charge in its entirety. A careful and diligent study of the constitutional provision governing the allowance of requisitions, the act of congress passed pursuant thereto, and the decisions of this court thereunder led the executive of the state of Idaho and his adviser to believe that, if as a matter of fact, the bodies of the petitioners could be brought within the state of Idaho, that the courts, state and federal alike, were powerless to inquire as to the method of their arrival, and so they conceived the idea, under certain decisions which will hereafter be analyzed, that they would foist the indignity upon the law, of a false affidavit and a false certificate purporting to conform with the requirements of the law as to matters of form, but in wilful derogation of its substance.

We are not confronted with a case of actual fugitives from justice. It can be readily understood that if one has committed a crime within a state, and has fled therefrom, that the law will not be very particular as to the means or the method by which his return to that state is insured. The law, however, in our judgment, will never wink at a fraud foisted upon itself, and especially is that true where that fraud is practiced by a sworn prosecuting officer and the chief

executive of a state. As this court has said: "No man in this country is so high that he is above the law. *No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.*"

United States vs. Lee, 106 U. S., 196-220; 27 L. Ed, 171-182; 1 Sup. Ct. Rep., 240.

Burton vs. United States, No. 539, decided May 21, 1906, 15th U. S. Sup. Ct. Adv. sheets, Oct. Term, 1905, pages 688-693.

Jurisdiction of the subject-matter in a court is one thing; jurisdiction of a person in any wise related to that subject-matter is quite another.

Pennoyer vs. Neff, 95 U. S., page 714; 24 L. Ed., 565.

One may exist without the other.

Our point is: That the jurisdiction of the persons of the defendants in the indictment named, was acquired by the District Court of Canyon county, through the wrongs and the frauds of the prosecuting officer of that county aided and abetted by the governors of the states of Idaho and of Colorado, through a conspiracy formed for that purpose.

A conspiracy is defined to be:

"The corrupt agreeing together of two or more persons to do, by concerted action,

something unlawful, either as a means or an end."

2 Bishop on Criminal Law, section 171.

Bishop hastens to explain in the following section, that "corrupt" in this definition, applies to an evil purpose, but not necessarily an intent to do what if accomplished by one alone, would be indictable, and that a like signification attaches to the word "unlawful."

Under this demurrer the prosecuting attorney of Canyon county and the governor of the state of Idaho contrived unlawful means to bring about what, by means of the contrivance was an unlawful end, to wit, the making of a false affidavit upon which the requisition proceedings were based.

Every one connected with the transaction knew that the affidavit charging these men with being present in the state of Idaho on the 30th of December was absolutely and unqualifiedly false. They knew that, without such an affidavit the law could not be invoked to secure a requisition, and they being officers of the law and charged with the execution of it, sought and used this means to secure a thing which was unlawful in itself, which thing they took unlawful means to secure.

SOME CONSTITUTIONAL GUARANTIES WHICH HAVE BEEN VIOLATED BY THE ARREST OF THESE APPELLANTS.

The fourth amendment to the Constitution of the United States provides that, "The right of the people

*to be secure in their persons * * * against unreasonable * * * seizures, shall not be violated."*

This guaranty accompanied each of these appellants on the 17th day of February, 1906. It will be observed that the right consists in the security, that the security extends to the person, and that that security of the person is violated, if it is *unreasonably seized.* What is an unreasonable seizure? It is one which is not based upon the law; ergo, it is an unlawful seizure; it is one which is secured in violation of the law. The Constitution of the United States means exactly what it says, or it means nothing at all. If one may be seized in violation of it and in violation of an act of congress made thereunder, then it affords no protection and it is not worth the paper on which it is written. *The protection to the appellants was absolute, unless the seizure was in accordance with law. How can a seizure be said to be in accordance with law when every one connected with the seizure knows that the paper proceeding upon which it is founded is an absolute falsehood?* We are not unmindful of that line of decisions in this court which in effect declares that that the first ten amendments do not limit the powers of the states in respect to their own people, but operate on the federal government only, but not one of such decisions are applicable in a case like this where the only power that could lawfully interfere with the liberty of the appellants arises under and by reason of the Constitution of the United States and the act of congress passed in pursuance thereof. Ex parte Sawyer, 124 U. S., 200; 31 L. Ed., 402-408.

Clause 2, of section 2, of article 4 of the Constitution of the United States is as follows:

> "A person charged in any state with treason, felony or other crime *who shall flee from justice* and be found in another state, shall on demand of the executive authority of the state *from which he fled*, be delivered up, to be removed to the state having jurisdiction of the crime."

Let us consider this provision for a moment: There is a recognition in it, that a state may have jurisdiction of a crime and have no jurisdiction of the person.

When it has jurisdiction of the crime it may, under certain conditions, and those alone, lawfully acquire jurisdiction of the person.

Those conditions are, that the one who has committed the crime shall flee from justice, and one can not flee from justice who has never been in the state where the crime was committed, but even with the provision of the Constitution existing as it does, no means of a lawful character could be recognized for obtaining jurisdiction over the person, until the enactment of the statute, section 5278, R. S. U. S., which is as follows:

> "Whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory *to which such person has fled*, and produces a copy of the indictment found, or an affidavit made

> before a magistrate of any state or territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic, by the governor or chief magistrate of the state or territory from whence the person *so charged has fled*, it shall be the duty of the executive authority of the state or territory to which such person has fled, to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear."

Unless the proceeding is in strict conformity with this statute, any seizure of the person made is in violation of a right guaranteed by the Constitution of the United States. It is no answer to say, that because private parties may seize without semblance of right and therefore jurisdiction of a court may attach in such a manner that it can not be detached, that the executive officers of a state may use the forms of law to destroy the substance of that law. *The jurisdiction of the Idaho court over these persons must depend upon its acquisition of the bodies of the persons by its own officers and by the executive officers of the state in strict conformity with the law, otherwise it has no jurisdiction at all.*

But if we are wrong in this, the question of its jurisdiction is immaterial, because the seizure was unreasonable, because it was unlawful, and being un-

lawful and therefore unreasonable, the Constitution of the United States guards that person as of the exact moment when it was unlawfully seized and the courts of the United States ought to restore that person to the exact condition in which it was when the laws of the United States were violated, both fundamental and statutory. There can be no escape from this conclusion, in consonance with either the law or the spirit of the Constitution or the act of congress.

It is no answer to say, that, if the defendants in the Idaho proceeding are guiltless, their innocence will be made to appear upon the course of the trial. *The provision of the Constitution guards them, guilty or guiltless, against any seizure by governmental officers at least, unless it is in strict conformity with the law.* Whether they be guilty or innocent, is not the question for determination and no right exists for its consideration.

It is clear, as we shall show by the authorities hereafter, that no provision of law exists for the extradition of one who is charged to have constructively committed an offense, in a state in which he was not present. *Why? The Constitution and the law guards even an offender in such a case as that against extradition.*

The Supreme Court of North Carolina, speaking upon this subject, in State vs. Hall, 115 N. C., 811; 28 L. R. A., 289, said:

> "What can be done to provide for this *casus omissus?* We may answer in the language of Spear: 'Nothing, by any extradition process, until there is some authority

of law for it. State statutes may be enacted to furnish a remedy not now supplied by either federal or state law.' Were the courts, without any semblance of right, to supply the legislative omission, it would be a criminal usurpation of authority, more pernicious to the public interests than the escape of, not two, but scores of criminals. Appellate courts can not deliberately legislate for the punishment of crime without incurring a moral accountability as grave as that of the criminal who suffers by the usurpation. * * Courts can not amend or override constitutions and statutes, and, upon the higher-law idea, anticipate dilatory legislatures by providing for the safety of the public in the event that anarchists should project deadly missiles across a state border. * * * If there is any foundation for apprehending that the disorderly elements of society are watching for opportunity to take life and destroy property, provided they can see a way of escape through the loopholes of defective laws, the representatives of the people must be trusted to meet, if not anticipate emergencies, as they arise. Neither actual nor possible consequences should deter judges from executing the law as it is plainly written. The *argumentum ab inconvenienti* when used to bring about a modification of a well-established principle of law, should be addressed to the law maker, whose province it is to provide a remedy for any evils growing

> out of its enforcement. Addressed to judges under such circumstances, it is an invitation or a temptation offered to violate their sacred obligation in order to appease the public. * * * The law which fails to provide for the extradition of a guilty man must be understood and adhered to, because it may be invoked as protection to the innocent, who are prosecuted without cause, *against the annoyance, expense and invasion of personal liberty involved in being extradited.*"

The demurrer confesses that the thing which was forbidden in the foregoing case, is exactly what has been done in the case at bar. The executive of Idaho and the prosecuting attorney of Canyon county, advised by that able and astute lawyer, the Hon. James H. Hawley, knew that no extradition law could be rightfully invoked to secure the persons of the defendants within the state of Idaho. They knew that if any extradition was granted, no matter how fair in form it might be on its face, any sort of an investigation by the courts, either federal or state, within the boundaries of Colorado, would necessarily set the prisoners at large.

Can it be possible that the Constitution of the United States governing extradition proceedings, is a protection to a prisoner within one state, when it is absolutely powerless in another? In other words, it is conceded, that if *habeas corpus* had been obtained from the United States Circuit Court for the District of Colorado, and it had been served, and re-

garded by the official brigands, who set in motion and carried out this proceeding, it would have resulted in the liberty of the prisoners, but because of the imaginary line constituting a state boundary, the federal courts, with like jurisdiction in the state of Idaho, are absolutely powerless to effect the same object.

There are some things which have been said by this court which might seem to sanction such a doctrine, but a careful analysis of what the court has said will demonstrate, we think, that it has never sanctioned and will not now sanction a proposition so monstrous. We shall have occasion to advert to this matter again when we come to the discussion of the authorities.

We claim that this arrest and the jurisdiction over the person which attached by reason of the arrest, is in violation of the fifth amendment to the Constitution of the United States, which provides, that no person shall be deprived of liberty, without due process of law.

Nothing can be added to the discussion of what constitutes "due process of law," by the writer of this brief. This great court has never been able to give any satisfactory definition of it, but it has contented itself by saying, in effect, that each case must be governed by its own peculiar circumstances and any definitions which may have been given are only of a general character and are only to be understood as applying to the facts of the particular case before the court.

A very full collation of the cases decided by this court and the definitions formulated in such cases, is

found in the 3rd volume of Words and Phrases, at pages 2227, et seq.

> "It is probably better to ascertain the intent and application of the phase 'due process of law' by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, and the reasoning on which such decisions may be founded."
>
> Davidson vs. New Orleans, 96 U. S., 97, 104; 24 L. Ed., 616.

In Missouri Pac. R. Co. vs. Humes, 115 U. S., 512-519; 29 L. Ed., 463-465, it is said:

> "In England the requirement of due process of law, in cases where life, liberty and property were affected *was originally designed to secure the subject against the arbitrary action of the crown, and to place him under the protection of the law.'*

In Holden vs. Hardy, 169 U. S., 366, 42 L. Ed., 780-790, it was observed:

> "Due process of law implies at least *a conformity with the natural and inherent principles of justice.*"

In State vs. Ashbrook, 154 Mo., 375; 48 L. R. A., 265; 77 Am. St. Rep., 765, the Supreme Court of Missouri defined "Due process of law," "as the law of the land, designed to *protect and preserve the rights of the citizen against arbitrary legislation, AS WELL*

AS AGAINST ARBITRARY EXECUTIVE OR JUDICIAL ACTION."

The Supreme Court of New York said, in People vs. Adirondack Ry. Co., 160 N. Y., 225-238:

> Due process of law consists in the observance of those safeguards which time and experience have shown are necessary to protect the citizen in the enjoyment of life, liberty and property."

The Supreme Court of Iowa, in the case of State vs. Hammer, 116 Iowa, 284-288, said:

> "Due process of law in its legal sense does not mean mere form."

The Supreme Court of Utah in Jenkins vs. Ballantyne, 8 Utah, 245-247; 16 L. R. A., 689-690, observed:

> "The term 'due process of law' includes ALL the steps essential to deprive a person of life, liberty or property. *It includes all the forms and acts essential to its application and to give effect to it.*"

We are aware, that, ordinarily speaking, if one is presented before a court, upon an indictment, and he is allowed a trial by jury, that due process of law is said to have been administered. We are aware, also, that, due process of law may consist in one form of trial in one state and another form in another, but we have yet to see a decision where any essential step in

the prosecution of a prisoner is violated, where it has been held that due process of law has taken place. We are aware, also, that there may be acts of independent parties, taken in connection with the prosecution of the case, for which the state is not responsible which would not violate due process of law where all of the acts of the state, in connection with the prosecution, were regularly and duly taken. But, we maintain, that these prisoners have not had due process of law, because it is conceded that the Constitution stood as their sufficient safeguard and protection in the state of which they were residents and citizens, but for the trick, subterfuge, conspiracy and outrage perpetrated upon their liberty by the connivance of the governors of the great states of Idaho and Colorado.

We submit that no candid mind can approve the course of those two governors. We submit that all right-thinking citizens turn with loathing and disgust from the action of the petty executives which deprived these citizens of the right to test the infringement of their liberty in the courts erected and maintained for that purpose. We submit that the Constitution of the United States does not stand for their protection in Colorado alone. It either stands for their protection at all times and in all places under a given set of circumstances, or it does not stand for their protection at all, and the guaranties therein contained in this and other provisions are worse than sounding brass or tinkling cymbals. They convey, in such case, high-sounding promises to the ear, only to break those promises to the heart. The Constitution, rightly construed, is not so. If it could have protected these men in Colorado, it is able to protect them in the state of

Idaho, and, in our judgment, this court will never say, nothwithstanding the lengths to which it has heretofore gone, in some of the cases, that the law may be trampled upon by the governors of two states, upon which to base a jurisdiction of the courts of one of them, over persons who are citizens of another.

Space will not permit, and it will serve no useful purpose, to pursue and analyze the decisions that have been rendered upon what constitutes due process of law. Suffice it to say, that, every essential step taken, must be in conformity with the law. The form of the the law can not be invoked to destroy its substance. A governor can not connive to procure, and procure knowingly, a wilfully false affidavit upon which to base requisition proceedings. He can not wrest from citizens of the United States, their liberty of person, upon any such wilful, deliberate, and flagitious violation of the law.

The arrest and detention of these prisoners is in direct violation of clause 2, of section 2, of article 4, of the Constitution of the United States, and section 5278, of the revised statutes, made in pursuance thereof.

Clause 2, of section 2, of article 4, is as follows:

> "A person charged in any state with treason, felony, or other crime, *who shall flee from justice* and be found in another state, shall, on demand of the executive authority of the *state from which he fled*, be delivered up, to be removed to the state having jurisdiction of the crime."

It needs no language of ours to construe this section. It has been exhaustively, authoritatively and finally determined by this court, that, in order to invoke the aid of this clause, there shall be an actual fleeing from justice; that one can not flee from the justice of a place where he has never been; that it is not sufficient to find him in another state, but he must be found in another state than that from which he fled, and that no one can flee from a state, within the meaning of this clause, unless he was actually, personally and bodily present in the state whose justice has been outraged. But, if there were any doubt upon that score, it was set at rest by the act of congress referred to, because the provision of the Constitution itself was not self-executing, and it required an act of congress to carry it into effect.

Kentucky vs. Dennison, 24 How,. 66-110; 16 L. Ed., 717-728.

This enactment is as follows:

"Whenever the executive authority of any state or territory demands any person as a fugitive from justice of the executive authority of any state or territory *to which such person has fled*, and produces a copy of the indictment found, or an affidavit, made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state or territoroy from whence the person *so charged has fled*, it shall

> be the duty of the executive authority of the state or territory to which such person has fled, to cause him to be arrested and secured, and to cause a notice of the arrest to be given to the executive authority making such demand or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent *when he shall appear.*"

In People vs. Hyatt, originally decided by the Supreme Court of the state of New York in 172 N. Y., 176; 92 Am. St., 706, this court in 188 U. S., page 691-713, 47 L. Ed., page 657-662, said:

> "We have found no case decided by this court wherein it has been held *that the statute covered a case where the party was not in the state at the time when the act is alleged to have been committed.* We think the plain meaning of the act requires such presence, and that it was not intended to include, as a fugitive from the justice of a state, one who had not been in the state at the time when, if ever, the offense was committed, and who had not, therefore, *in fact, fled therefrom.*"

In the case of

> Munsey vs. Clough, 196 U. S., 364; 49 L. Ed., 515,

the doctrine of the Hyatt case was reaffirmed with the statement, that, in every habeas corpus proceeding, based on the requisition stated, there were two things to be considered:

First. Whether the person demanded has been substantially charged with the crime and,

Second. Whether he is a fugitive from justice.

The first is a question of law; *the latter is a question of fact. Any warrant issued upon the latter is only presumptive*, which presumption, notwithstanding the regularity of the appearance of the papers, may be overthrown, "by contrary proof in a legal proceeding to review the action of the governor."

Later on in the case the court says:

> "When it is conceded (as the demurrer concedes it in this case), or when it is so conclusively proved, that no question can be made that the person was not within the demanding state when the crime is said to have been committed and his arrest is sought on the ground only of a constructive presence at that time in the demanding state, then the court will discharge the defendant."

These are the two latest enunciations of this court upon that subject and it is useless to cite the long line of authorities from state courts leading thereto, all of which are disregarded by the Supreme Court of the state of Idaho in the decision which it has rendered, together with an animadversion upon the decisions of this court, which we think would never have been made, thought or promulgated, if the question had arisen with respect to a requisition upon the governor of the State of New York for John D. Rockefeller, John Pierpont Morgan and Thomas F. Ryan. There was and is just as much authority

and just as much right to maintain a requisition for the three last named gentlemen in the case at bar as there was or is for these defendants, under the conceded facts of this case as they are written into the stipulated answer to the return.

Fancy, if you please, the governor of the state of New York honoring a requisition upon the concededly false affidavit, known by him to be false, for the arrest of those gentlemen. Fancy, if you can, the Supreme Court of the state of Idaho saying, after they had been gotten into that state, upon such a basis, that the courts, state and national, were powerless in the premises. Fancy the federal court of the state of Idaho declaring, that, because the writ of the governor of the state of New York was *functus officio* that therefore its arm was paralyzed. It may be that the process, under which jurisdiction exists in the District Court of Canyon county, in and for the state of Idaho, is lawful, but the jurisdiction of the person was acquired unlawfully and that jurisdiction exists upon an unlawful thing participated in by its prosecuting officer, a part of the machinery of the court itself, and any jurisdiction founded upon the wrong of the court or any officer of it can not be maintained. It is no answer to say, because no course has been prescribed by congress for the restoration of these men to the state of Colorado, that, therefore, the provision of the Constitution which protects them from arrest, without due process of law and against unreasonable seizure, can be violated.

It will stand conceded in this court, that if an opportunity had been given us to apply for a writ of *habeas corpus* in the state of Colorado or in any other

state than the state of Idaho, into which the prisoners were taken on their way to Idaho, that the courts, state and national alike, would have been bound to have enlarged them.

What is the magic thing which gives to these prisoners the benefit of the writ of *habeas corpus* in Colorado and Wyoming, if they had been allowed the opportunity to obtain it, which deprives them of it in the state of Idaho?

Is the liberty of the individual to be made the plaything and the foot-ball of one state in the Union, when it is protected in every other state?

Can the black art of conspiracy and the devils which it may raise, become so powerful as to paralyze the action of the federal judiciary and the state judiciary as well?

Let us look to the decisions to see whether or not this court has ever sanctioned any such proceeding.

Preliminarily, we will call attention to one or two of the decisions of the lower federal courts.

In the case of the State of Tennessee vs. Jackson, reported in 36 Fed Rep., page 258, Judge Key had this state of facts before him for consideration:

The defendant resided in the city of Chicago, Illinois; he sold the prosecutor a horse. The purchaser of the horse resided in Chattanooga, Tenn. The purchaser saw an advertisement in a Chicago newspaper offering the horse for sale and the trade was completed by correspondence; Jackson remaining all the while in Chicago and the purchaser in Chattanooga. The horse was shipped by rail to the purchaser and the price remitted by mail to Jackson. After the arrival of the horse at his destination and a

trial of his abilities and qualities, the purchaser claimed that the horse was worthless, and that the price paid had been obtained by false pretenses and he sued out a warrant against Jackson which was issued by a justice of the peace in Chattanooga. The matter was placed in the hands of a detective *who made affidavit that Jackson had been charged with committing the crime of obtaining money by false pretenses* against the state of Tennessee, and that he had fled from the state of Tennessee and was in the state of Illinois. The governor of Tennessee made requisition upon the governor of Illinois for Jackson, under the provisions of section 5278, Revised Statutes of the United States. Armed with these papers the detective went to Illinois, obtained a warrant from the governor of that state for the arrest of Jackson and arrested him and *hurried him off to Tennessee*, had him tried before a justice of the peace and committed to jail.

Jackson sued out a writ of *habeas corpus*. It was contended that the mailing of the letter containing the money in the postoffice at Chattanooga, addressed to Jackson at Chicago, was, in law, a delivery to Jackson and that in consequence, Tennessee had jurisdiction, and having jurisdiction *and the defendant being here*, NO MATTER HOW, THE AUTHORITIES OF THE STATE HAVE THE RIGHT TO RETAIN HIM IN CUSTODY FOR TRIAL.

That is exactly the contention in this case. This demurrer admits that the affidavit was false; that the requisition papers were a fraud; that habeas corpus, if obtained in Colorado, or Wyoming, would have been bound to enlarge these defendants, but they say,

we now have them in Idaho; they have been subjected to the jurisdiction of our courts, by reason of this false and fraudulent affidavit and requisition. What are you going to do about it? It remains for this court to say.

Judge Key said:

> "Jackson was not a fugitive. He had not in all his life been in Tennessee, had never fled from it, and his case did not fall within the positive terms of this law. *The oath of the detective was false and the governors of the two states imposed upon. The whole proceeding was a fraud upon the law.*"

In the case at bar the governors of the two states were not imposed upon; the demurrer admits that both of them knew that the affidavit was false and that one of them was a conspirator in the procuration of that false affidavit and the other one having knowledge of such conspiracy and such false affidavit, became a part of the conspiracy and lent himself to the overthrow of the provision of the Constitution and the statute made in pursuance thereof.

Judge Key said:

> "If this arrest and imprisonment are to be maintained, *the opportunities for wrong and abuse of this law will be great and widespread.* Commercial transactions are largely conducted by mail and by telegraph. If the seller at one end of the line and the buyer at

the other *with the aid of detectives*, in cases of dispute and controversy between them, are to be allowed, under such proceedings as these, *to have the citizens of one state carried to another state for trial, under the false allegation that the person charged has fled, instances of oppression may not be few.* It seems to me that the general government *can not stand by and see its laws so trifled with and abused.* * * * It seems to me that such authority should not be held to the seizure and removal of a citizen of its state, when such seizure and removal were procured by fraud, falsehood and imposition." (In this case unblushingly confessed to have taken place.)

We desire to advert briefly to,

In re Cook, decided in 49 Fed. Rep., 833.

In that case, which seems to have been much relied upon by the Supreme Court of the state of Idaho, it was decided that the executive warrant had spent its force, when the defendant was within the demanding state and held upon process regularly issued there.

That case, however, was different from the one at bar and proceeded upon a wholly different theory. Cook, as a matter of fact, was in Wisconsin on the day when the offense was committed. Cook had prescribed, authorized and was maintaining a course of proceeding upon the part of his servant, which would inevitably tend to the receipt of a bank deposit at a

time when Cook knew that the bank was insolvent. The case was taken to this court, and in 146 U. S., page 183, will be found its opinion.

This court did not sustain the doctrine of the lower court but it proceeded upon altogether a different theory, without, however, either approving or condemning the doctrine which had been announced. An examination of the record revealed that after Cook was arrested, upon the warrant of the governor of the state of Illinois, that he not only had an opportunity to, but as a matter of fact he did apply to the courts in Illinois for a writ of habeas corpus, which was decided adversely to him. He did not appeal from that decision or in any other way seek to question it, but he submitted himself to the jurisdiction of the officer and accompanied him to the state of Wisconsin. He remained in the state of Wisconsin several months after his arrest, quietly awaiting his trial. In due time the case came on for trial and after it had been proceding for some considerable time he then sought to avail himself of the privileges of the writ in the federal court sitting in Wisconsin.

In passing upon that case this court did not hold that it did not have jurisdiction, but it held that, there being circumstances to show that he had ample opportunity to apply for his writ, and that he did not do so until after the jury had been sworn and his trial begun, was of itself a special circumstance to indicate *that the federal court should not interpose at this time*. In other words, he had not exhausted his remedy in the state court; he had submitted himself to its jurisdiction, that jurisdiction was being

proceeded with and in the midst of it he sought to avail himself of the writ.

Mr. Justice Brown further said in the course of that opinion:

> "Some reasons are, however, suggested, for holding that, if he were not, in fact, a fugitive from justice and entitled to be relieved upon that ground, by the courts of the surrendering state, *he ought not to be deprived of that right by a forced deportation from its territory, before he could have an opportunity of suing out a writ of habeas corpus.* That question, however, does not necessarily arise in this case, since the record before us shows that he did sue out such writ before the Criminal Court of Cook county and acquiesced in such decision remanding him to the custody of the officer."

So we see that this case is far from an authority in favor of the detention of the prisoners in a case like the one at bar. Here the prosecution is charged in conjunction with the executives of the states of Idaho and Colorado, with a studious attempt to preclude the issuance of the writ in the first place and to disobey it, if it should be issued, in the second place, so as to give to the courts of Idaho a jurisdiction over the person of these defendants, which it otherwise could never have obtained. That jurisdiction over the person resulted from an obvious infraction of the law and a perpetration of a fraud upon the Con-

stitution of the United States and the act of congress made pursuant thereto.

If the case of

Ker vs. Illinois, found in 119 U. S., at page 436,

is any authority in a case like the one at bar, then we are unable to comprehend what we think is the plain import of the English language.

Ker had been indicted, tried and convicted in the Criminal Court of Cook county. *During the proceedings connected with the trial* (and not before) he presented a plea in abatement. This plea in abatement, it is said, in the course of the decision, was "very full of averments, that the defendant protested and was refused any opportunity whatever from the time of his arrest in Lima until he was delivered over to the authorities of Cook county, *of communicating with any person, or seeking any advice or assistance in regard to procuring his release, by legal process or otherwise.*" All of which he alleged was a proceeding in *violation of certain treaty provisions* between the United States and Peru.

The decision proceeds to a discussion of the treaty provisions between the United States and Peru, and the opinion is made to hinge upon that matter, and that alone.

The court expressly refused to decide the question of his forcible seizure in another country and his transfer by violence and force and fraud, to this country, for the reason that neither the laws nor the Constitution, nor the treaties of the United States,

guarantee him any protection as against "a forcible seizure IN ANOTHER COUNTRY," and that is all that there is to the decision upon that subject.

Had he been forcibly seized *within this country*, by a fraud upon the law, participated in by the executive and prosecuting officers, it could not, and it would not have been said by this court that the Constitution afforded him no protection.

In passing, we should call the court's attention to the fact that there was nothing in the plea in abatement which in anywise stated that he could, or would have, availed himself of a writ of *habeas corpus*, had he had opportunity. The only averment was, that, by reason of his forcible arrest and his unlawful detention, he was prevented from communicating with friends.

But the case which is, perhaps, more relied upon than any other, for the high-handed proceeding resulting in the present detention of these defendants, is that of

Mahon vs. Justice, found in 127 U. S., at page 700; 32 L. Ed., 283.

That was a case where one who had committed a crime in the state of Kentucky, fled to the state of West Virginia. The one sought was unquestionably a fugitive within the meaning of the law, not as here, a man who was not within the jurisdiction when the alleged offense was committed. Requisition papers were duly obtained from the governor of Kentucky and duly placed before the governor of West Virginia. While the governor of West Virginia was considering the papers, demanding the requisi-

tion, certain private individuals, without warrant or authority of law of any kind or character whatsoever, forcibly kidnapped and forcibly removed the applicant for the writ from the state of West Virginia to the state of Kentucky. After arriving in which latter state, he was arrested, upon process issued on the indictments which had been found against him in Kentucky.

Mr. Justice Field who spoke for the majority of the court, there being no chief justice at that time, stated:

> "The only question, therefore, presented for our determination is whether a person indicted for a felony in one state, forcibly abducted from another, and brought to the state where he *was indicted, by parties acting without warrant or authority of law*, is entitled, under the Constitution or the laws of the United States, to release from detention under the indictment, by reason of such forcible and unlawful abduction."

You will observe that the court was very careful to state the precise question which it was deciding, and even upon that question, two of the most vigorous minds which have ever graced the bench of this court, took the liberty of dissenting.

What would Justice Field and the other members of the court have said if the defendant had been forcibly abducted and brought to the state where he was indicted upon a false affidavit, connived at by the executives of the two states purporting to act with warrant and authority of law? We shall see.

Speaking as to Kentucky upon the subject, Mr. Justice Field said:

> "The law of that state which is enforced, is a law for the punishment of the crime of murder and *she had merely sought to enforce it by her officers under process executed within her territory.* SHE DID NOT AUTHORIZE THE UNLAWFUL ABDUCTION OF THE PRISONER FROM WEST VIRGINIA."

Quoting from a North Carolina case, he said:

> "*But that was not the act of the state,* but of a few of its citizens, for which the Constitution of the United States has provided a reparation. It gives the governor of that state the right to demand them of the governor of this, and imposes on the latter the obligation to surrender them, but until it is refused, there can be no cause of complaint."

It will be observed that there was no cause of complaint against the executive officers *or* the prosecuting officer of the court claiming jurisdiction over the person of the defendants.

Quoting from another case he says:

> "The officers of the law take the requisite process, find the prisoners charged within the jurisdiction, *and this too, without force, wrong, fraud or violence on the part of any agent of the state or officer thereof.*"

That is the distinction between the Mahon case and the one at bar, which the majority of this court, speaking through Mr. Justice Field, had in mind. There can be no force, no wrong, no fraud and no violence on the part of any agent of the state or officer thereof. No governor can procure a false affidavit to be made, upon which to issue a requisition. No governor upon whom that requisition is made, knowing the falsity upon which it is founded, can further conspire to cause an arrest to be made at an unseemly hour, with the avowed determination of avoiding the writ of habeas corpus, or disobeying one, if it is issued, by the prevention of the service thereof, or otherwise.

Think of it. The adjutant general of the state of Colorado accompanied by a portion of the militia of that state, engaged in an act to set the courts of that state at defiance, if an attempt at jurisdiction by a writ of *habeas corpus* shall take place.

It would seem as though the court had in view that just such a question might arise as has arisen in this case. The ultra doctrine for which the court was willing to stand, was expressed in the Ker case and in the Mahon case, and two of the court fell by the wayside in the latter case. The doctrine was too much for them. The court had gone to greater lengths than they, as judges, were willing to go, and they express a hearty dissent, which must, upon re-examination, we think, meet with the approval of this court.

But, we concede that the Mahon case is good for all that was decided in it, and contend that this case is far beyond it.

If Mahon was kidnaped and carried into Kentucky, in the opinion of the minority, in plain violation of the Constitution of the United States, and is detained therein, in continued violation thereof, how much more is it true in the case at bar. Both Mahon and Ker were, as a matter of fact, fugitives from justice. Even as such fugitives from justice, however, they were not beyond the protection and the shield of the Constitution. A man is not an outlaw because he is a criminal; he is as much under the protection of the laws and as much within the folds of the Constitution and as much entitled to its shield as is the best and most deserving citizen in all the country.

In Ker vs. Illinois, cited supra, which we have said seems to have been borne in mind even by the majority of the court in the Mahon case, we find this language:

> "We do not intend to say that there may not be proceedings *previous to the trial* in regard to which the prisoner could invoke in some manner the provisions of this clause of the Constitution, but *for mere irregularities* in the manner in which he may be brought into the custody of the law, we do not think he is entitled to say that he should not be tried at all for the crime with which he is charged in a regular indictment. He may be arrested for a very heinous offense, by persons without any warrant or without any previous complaint and brought before a proper officer, and this may be in some sense said to be 'without due process of law.'"

But, it would hardly be claimed that after the case had been investigated and the defendant held by the proper authorities to answer for the crime, he should plead that he was first arrested without "due process of law." So here when found within the jurisdiction of the state of Illinois and liable to answer for a crime against the laws of that state *unless there was some positive provision of the Constitution* OR OF THE LAWS OF THIS COUNTRY VIOLATED, IN BRINGING HIM INTO COURT, it is not easy to see how he can say that he is there without "due process of law."

We say that both the Ker case and the Mahon case in effect decide that neither the executive, the judicial nor the legislative agencies of a state can by a conspiracy to avoid a right provided for by orderly and regular process, acquire a jurisdiction for the courts, which they would not otherwise have, even though such courts have jurisdiction of the offense. A court must not only have jurisdiction of the offense, but so far as it is concerned, it must acquire jurisdiction of the offender, without engaging in the violation of any law.

The prosecuting officer of this court lent himself to a scheme to secure jurisdiction of the persons of the defendants by palpable violation of the law, to wit, the taking of a false oath known by him to be false at the time of the taking of it, and the jurisdiction of the Canyon County District Court over the persons of the defendants to-day, depends upon, was acquired by and results through the taking of that false oath and not otherwise.

It does not follow that because no machinery of the law exists for restoring these prisoners to the state of Colorado, that therefore this court is powerless in the premises.

Mr. Justice Bradley in his dissenting opinion says that they should be enlarged and "given an opportunity to return to the state from which they were taken. It is not enough that the proceedings shall be regular *upon their face*. They must be regular as *a matter of fact*, and upon the question of the persons of the parties sought to be rendered within the demanding state at the time of the commission of the offense, the courts should always be open to a determination of that question."

In Munsey vs. Clough, cited supra, the proceedings were absolutely regular upon their face. They were not true as a matter of fact and the court says:

> *"When it is conceded or when it is so conclusively proved that no question can be made that the person was not within the demanding state when the crime is said to have been committed, and his arrest is sought on the ground only of a constructive presence at that time in the demanding state, then the court will discharge the defendant."*

It remains to consider in this connection In re Moore, 75 Fed., 821.

That case was decided upon the court's understanding of the three cases which we have just analyzed. It is diametrically opposed to a court of like jurisdiction rendering the opinion in Tennessee vs.

Jackson, *cited supra*, and with all due deference to it, it did not understand nor comprehend, in our judgment, the points decided in those cases.

In that case, as in the case of Tennessee vs. Jackson, "*the governors of the two states were deceived by false affidavits and testimony furnished them*," and acting upon such fraud and deception in none of which did they participate themselves, a jurisdiction was obtained over the person, which would not otherwise have existed.

It is no authority in the case at bar for that reason. It is opposed to the case of Tennessee vs. Jackson and it does not correctly determine what was decided by this court in Cook vs. Hart, Mahon vs. Justice and Ker vs. Illinois.

If we have made it clear that the foundation of jurisdiction of the court of Idaho over the persons of these defendants is based upon a false affidavit made by the district attorney of Canyon county, we are prepared for the citation of authorities supporting the doctrine that:

> "No lawful thing, founded upon a wrongful act, can be supported."
>
> Ilsley vs. Nichols, 12 Pick. (Mass.), 270; 22 Am. Dec., 425.
>
> Luttin vs. Benin, 11 Mod., 50.

The Massachusetts court used this language:

> "These cases, therefore, seem to establish a general principle that a valid and lawful act can not be accomplished by any un-

lawful means, and whenever such unlawful means are resorted to, the law will interpose and afford some suitable remedy, according to the nature of the case, to restore the party injured by these unlawful means, to his rights."

The employment of any subterfuge, scheme, enterprise, pretense or design, by which defendant is brought into the state for the purpose of arresting him must fail, *unless warranted by the laws of the land. This is familiar law.* The question does not depend upon the honest conviction of the persons engaged in the project, but upon the legality of the act. The rule is of ancient date and has been stated and acted upon in a variety of cases.

To the same effect is

Smith vs. Meyer, 1 T. & C. (N. Y.), page 665.

In re Alfred Largrave, 45 How. Prac., 301.

"The fact that the accused was brought by force or fraud within the jurisdiction of the country from which it was sought to extradite him, does not prevent his extradition at least *unless the prosecutor was a party to the scheme by which the accused was brought within the jurisdiction.*"

Volume 2, Whar. on Con. of Laws, section 849.

"To justify a magistrate in declining jurisdiction in extradition proceedings, upon

the ground that the accused was brought within the territorial jurisdiction by a trick or fraudulent device, *such trick or fraudulent device must be chargable to the prosecutor.* Ex parte Seitz, Rap. Jud. Quebec, 8 B. R., 392."

Wharton on the Conflict of Laws. Note to section 849.

"If a man is wrongfully brought into a jurisdiction, and there lawfully arrested, yet he ought to be discharged, *for no lawful thing founded upon a wrongful act can be supported.*"

In re Allen, 13 Blatchf., 271, volume 1, Fed. cases, 208.

Hooper vs. Lane, 6 H. L., case 443.

Hill vs. Goodrich, 32 Conn., 588.

In re Robinson, 8th L. R. A. (Neb.), page 398.

In re Walker, 61 Neb., 803.

Compton vs. Wilder, 40 Ohio St., 130.

Adriance vs. Largrave, 59 N. Y., 110.

Browning vs. Abrahams, 51 How. Prac., 173.

Kendall vs. Ailshire, 28 Neb., 707 (26 Am. St., 367.)

A fraud upon the law can never beget a legal proceeding, and this court has decided that the only lawful method by which the body of these defendants could have been obtained within the jurisdiction of

the state of Idaho was by virtue of section 5278 of the Revised Statutes of the United States, made under and pursuant to clause 2, section 2, of article IV of the Constitution.

Lascelles vs. State of Ga., 148 U. S., 537; 37 L. Ed., 549-552.

Judge Jenkins said the same thing in the Wisconsin case.

In re Cook, 49 Fed., 833-841.

It was also there decided that the right to one's personal liberty does not depend upon the arbitrary will of any person whomsoever. (See page 839.)

That jurisdiction of the offense and jurisdiction of the offender are different things, and that one may exist without the other. See

Adams vs. People, 1 N. Y., 173.

In ex parte Reggel, 114 U. S., 642; 29 L. Ed., 250, this court held that a defendant in extradition had

> "the right to insist upon proof that he was within the demanding state at the time he is alleged to have committed a crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process."

When, under the admitted allegations of this petition, standing as an answer to the return, have we had a chance to exercise that right which this great court says we are entitled to exercise?

These arrests and detentions violate the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Whatever applicability the fourth and fifth amendments may or may not have under the decisions of this court, what we have there said is reiterated with emphasis here without further discussion and in addition thereto we desire to argue further, that what has been done in the cases of Moyer, Haywood and Pettibone, by the authorities of the state of Colorado and the state of Idaho, *has resulted in a denial to them of the equal protection of the laws.*

No one ever heard before of the chief executive officers of two great states, entering into a conspiracy to prevent the jurisdiction of a court attaching to her citizens so as to determine a question upon which the liberty and perhaps the lives of such citizens depend.

We know that it will be urged in this connection that these defendants are regularly indicted within the state of Idaho and that they will be regularly tried in that state, and we have no desire at this time to go outside the record upon the question of the regularity of this indictment. The record discloses that the same prosecuting attorney's name is signed to the indictment who wilfully perjured himself in the affidavit upon which the requisition pro-

ceedings were based. We know that this case must be decided upon the record, and we therefore refrain from any comments upon the manner by which this indictment was procured, or upon those who instigated it, and are responsible for it. Animadversion upon these matters will receive due attention at the proper time and in the proper place. But, the spirit of the law is, that no man shall be dragged from his home and removed 1,500 miles or more to a distant state, there to answer for the commission of an offense which took place at a time when he was confessedly not present, when no lawful means existed by which his extradition could be secured, except by the perpetration of a fraud upon the law. Far better even if every charge contained in the indictment be true, that the majesty of the law should be upheld, than that any particular man be punished, even though he be guilty of the crime charged.

In the language of the Supreme Court of North Carolina in State vs. Hall, 115 N. C., 811; 28 L. R. A., 289-292:

> *"Were the courts without any semblance of right to supply the legislative omission, it would be a criminal usurpation of an authority more pernicious to the public interest than the escape of not two, but scores of criminaals. Appellate courts can not deliberately legislate for the punishment of crime without incurring a moral accountability as grave as that of the criminal who suffers by the usurpation."*

Lay aside the presumption which obtains, that these men are innocent until they are proven guilty. Admit, for the purpose of the argument that the offense charged raises a presumption that they are guilty until they prove themselves innocent, nevertheless it has required a breach of the law upon the part of the governors of two states in order to secure the jurisdiction of the Idaho courts over their bodies. We can deal with those who violate the law, as private citizens, but when those who are sworn to execute the laws deem it their duty to violate them, we have a condition which confronts us which will result in chaos. We have all seen the effect which has followed the decisions of a weak court, lending itself politically to the aid of those who elevated the judges to power, and we have seen and experienced the utter and hopeless condition which has resulted, when the turn of the tide has compelled the same court to ignore, override and repudiate its own decisions. The law was and is, that no lawful extradition could have been granted in the case of these men. An unlawful extradition was ganted, one which the Supreme Court of Idaho in its decision admits was only conformable to the law in manner of form while violative of its substance. The decision of the Supreme Court of Idaho, we are sure, will shock the sense of justice and of right in the bosom of every member of this court. It is not founded upon authority, as we have shown, and it ignores a foundation principle of natural justice embraced in every Constitution which has ever been written by English freemen, namely, that a man's personal liberty is sacred, unless that liberty is ter-

minated in strict accord with the law. It is, of course, wrong that one should kill his fellow man, but it is infinitely worse that organized society in the name of the law should kill a man because he is supposed and is charged to have killed another, and the law protects the person so charged as against the act of any officer of the law, unless that officer can put his finger upon the sentence which authorizes his procedure and unless he can show an exact and literal conformity with such authorization.

The Fourteenth Amendment forbids any arbitrary deprivation of liberty.

In re Converse, 137 U. S., 624; 34 L. Ed., 796-9.

Hodgson vs. State of Ver., 168 U. S., 262; 42 L. Ed., 461-64.

That the arrest, detention and imprisonment of these prisoners was brought about by, and resulted solely from, a wilful, premeditated and deliberate violation of the Constitution of the United States and the act of congress, and that the jurisdiction of the courts of the state of Idaho over the persons of these defendants has been acquired by and is founded upon the result of that conspiracy, violation and fraud, is admitted by the demurrer in this case.

There remains, therefore, for discussion, only one proposition, and that is, whether the Supreme Court of the United States will grant the relief which has been denied by the Supreme Court of the state of Idaho and the Circuit Court of the United States sitting in and for the state of Idaho.

This court has asserted, over and over again, that upon it devolves the duty of maintaining the majesty and the authority of the federal Constitution and the laws made in pursuance thereof, and that, although a fugitive is restrained, under authority derived from the Constitution of the United States, he is not in the custody of or under restraint by an officer of the United States, and therefore, state courts have concurrent jurisdiction with federal courts, to determine, by writ of habeas corpus, the validity of his imprisonment.

The duty of both courts is to exercise such jurisdiction. The question is one arising under the Constitution and laws of the United States, and the prisoners have the right to the independent judgment of the federal courts upon the subject of their detention. The federal courts have sometimes required the prisoner to await the action of the state courts upon the theory that the state courts were as likely to administer the law as were the courts of the United States, and they have sometimes withheld relief on writs of habeas corpus, and required defendants, who were convicted, to sue out writs of error, *but they have never denied the authority of the federal courts in the premises.*

Robb vs. Connolly, 111 U. S., 624.

Roberts vs. Riley, 116 U. S., 80.

Some of the lower federal decisions upon this subject are as follows:

Bruce vs. Runyan, 124 Fed. Rep., 481.

Ex parte Hart, 63 Fed., 249; 28 L. R. A. 801.

In re Roberts, 24 Fed., 132.
Ex parte Brown, 28 Fed., 653.
Ex parte Morgan, 20 Fed., 298.
Ex parte Robb, 19 Fed., 26.
In re Doo Woon, 18 Fed., 898.
Ex parte McKean, 16 Fed. cases, No. 8848.

We have sought the writ of habeas corpus at the first place and the first moment obtainable. We have invoked and exhausted the jurisdiction of the state courts on that subject. The Supreme Court of Idaho has rendered its final decision and has filed its final opinion upon the right of our detention, which opinion is as controlling and as unlimited as it would be if it had been rendered after judgment and sentence.

We have invoked the aid of the federal court, sitting in and for the state of Idaho, and our writ has been quashed on hearing of a motion and demurrer attacking the return. We are without any manner of remedy, in any way, shape or form, except in this tribunal, and under the circumstances of this case, the time to take jurisdiction is now. The circumstances warrant it, and the decisions of this court uphold it, as was said by this court in the case of

Allen vs. Georgia, 166 U. S., 138; 41 L. Ed., 949.

The deprivation of a right which is indispensable to the liberty of every citizen justifies federal interference. If this high-handed proceeding can be carried to an end under the sanction of the decision of the Supreme Court of Idaho and of the Circuit Court

of the United States, sitting in and for that state, the liberty of no man on this continent in this country, is safe. A dastardly scoundrel in the state of California can, with two complaisant governors, drag a citizen of Massachusetts or of New York, to that state, three thousand miles away from his home, and place him on trial for any charge that he has the audacity to concoct or conceive.

Under these decisions, the guaranties of the Constitution as to personal liberty, unreasonable seizure, due process of law and the equal protection of the laws, are myths and snares. One does not walk in the broad light of day, if these opinions are correct, under the protection of the solemn compact which forms the basis of this government, but rather, each one holds the liberty of his person at the will and the whim of any villian, or any set of villians, who are temporarily entrusted with the execution of our laws.

In this case we have done each and every one of those things before invoking the aid of this court, which were suggested to be done, in

> Whitten vs. Tomlinson, 160 U. S., 231; 40 L. Ed., 406.

We know that habeas corpus can not usurp the functions of a writ of error, but habeas corpus is pre-eminently the writ on which to test jurisdiction, not error within jurisdiction. A fatal defect in jurisdiction itself is the question presented by this record.

> Felts vs. Murphy, decided March 12, 1906, by this court, No. 533, not yet officially reported, but printed in advance sheet No. 10 of the L. Ed., page 366.

Valentina vs. Mercer, No. 404, decided by this court March 12, 1906, 10th Adv. sheet, page 368.

Whitney vs. Dick, No. 557, decided by this court April 30, 1906, 13th Adv. sheet, 584.

Wood vs. Brush, 140 U. S., 278; 35 L. Ed., 505.

Whatever the usual rule may be, it has recently been held that special circumstances authorize a departure from it.

In re Lincoln, dec. May 14, 1906; 14 Adv. Sheet, 602.

Where the authorities seem to have been very fully collected and cited by Justice Brewer, speaking for the court. Certainly if there ever was a case with special circumstances attendant upon it, we are now confronted with such a case.

The only ground of escape from a present decision herein will be that it lies within the power of the court to put us to a writ of error in case of a conviction.

We believe that that power lay exclusively with the federal court of Idaho, as it would have lain with this court, if the original application had been made here. In any event, the appeal does not present that question. The decision appealed from was one which quashed the writ and remanded the prisoner to custody, based on the motion and the demurrer. The Circuit Court of Idaho did not attempt to exercise the discretion which it might have claimed, to have waited until a final determination on the merits of the case,

by the courts of the state of Idaho. The majesty of the law, the authority of the national Constitution and the enactment of congress require vindication in these cases at the hands of this court, and confidently relying upon such vindication we submit this case.

It is but proper to say that, in the preparation of this brief the Hon. Fred Miller, of Spokane, a member of the bar of the Supreme Court of the states of Washington and Idaho, and the Hon. John F. Nugent, of Boise, Idaho, a member of the bar of the Supreme Court of the state of Idaho, have contributed no unimportant part, and the only reason that their names are not attached hereto as counsel, is because they have not yet been admitted to practice in this court.

We ask and we believe that the action of the Supreme Court of the state of Idaho and of the Circuit Court of the United States sitting in and for the state of Idaho, will be reversed, and that they will be directed to sustain the writs and direct the release of the prisoners, with an opportunity to them of returning to the state from which they were kidnapped by the conspiracy, confederation and agreement of the governors of the states of Idaho and Colorado, acting in conjunction with each other, for the overthrow and in avoidance of a provision of the Constitution of the United States and an act of congress made pursuant thereto.

Respectfully submitted,

JOHN H. MURPHY,
CLARENCE S. DARROW,
EDMUND F. RICHARDSON,
Counsel for Appellants and
Plaintiffs in Error.

APPENDIX

IN THE SUPREME COURT OF THE STATE OF IDAHO.

IN RE CHARLES H. MOYER.

February Term, 1906. Filed April 14, 1906. Sol Hasbrouck, Clerk.

HABEAS CORPUS—INTERSTATE EXTRADITION—ILLEGAL RENDITION—HOW AND WHEN CAN BE QUESTIONED—MANNER OF ARREST—MOTIVES FOR ISSUANCE OF EXECUTIVE WARRANT—FUGITIVE FROM JUSTICE JURISDICTIONAL QUESTION—DETERMINATION QUASI JUDICIAL—WHEN CEASES TO BE FEDERAL QUESTION.

1. Where the accused is personally within the jurisdiction of the demanding state and there applies to the court for his discharge on habeas corpus, he can not raise the question as to whether or not he has been, as a matter of fact, a refugee from the justice of that state within the meaning of the federal Constitution and the act of congress authorizing interstate extradition.

2. The action and conduct of the chief executive of the state in which the accused was found in issuing

the executive warrant and of the executive and ministerial officers acting in aid of his warrant, is a matter for the consideration of the courts of his state, subject to the reviewing authority of the federal courts in so far as the federal question is involved, and is not a question open to examination or consideration by the courts of a foreign state.

3. The warrant of the chief executive of the state surrendering an accused person, whether issued lawfully or unlawfully, has accomplished its purpose and become *functus officio* as soon as the accused is delivered into the jurisdiction of the demanding state, and the regularity of its issuance thereupon ceases to be a question for judicial inquiry on application by the prisoner for his discharge, where he is at the time, held under due and legal process issued out of a court of competent criminal jurisdiction of the demanding state.

4. The motives which prompt the chief executive of a state to issue his warrant for the rendition of a prisoner are not proper subjects of judicial inquiry. Such inquiry would be opposed to public policy and the freedom of action of the executive department of government.

5. The fact that a wrong has been committed against a prisoner in the manner or method pursued in subjecting his person to the jurisdiction of a state, against the laws of which he is charged with having transgressed, can constitute no legal or just reason why he should not answer the charge against him, when brought before the proper tribunal. The com-

mission of an offense in his arrest does not expiate the offense with which he is charged.

6. The jurisdiction of a court in which an indictment is found or an accusation is lodged is not impaired by the manner in which the accused is brought before the court.

7. In interstate extradition the prisoner is only held under the extradition process until such time as he reaches the jurisdiction of the demanding state and is thenceforth held under the process issued out of the courts of that state, and it necessarily follows that there is no longer a federal question involved in his detention.

8. Returns of the officer and answer of the prisoner examined and considered in this case, and, *held*, that the prisoner is being detained under process duly and regularly issued by a court of competent criminal jurisdiction, and that he is not entitled to a discharge on habeas corpus.

(Syllabus by the Court.)

Application of Charles H. Moyer for a writ of habeas corpus. Writ issued and case heard and considered on the return and supplemental return of the officer and the answer of the prisoner, after which writ is quashed and the prisoner remanded to the custody of the officer.

Fred Miller, John F. Nugent and Edmund F. Richardson for the petitioner.

John J. Guheen, attorney general; Owen M. Van-Duyn, prosecuting attorney of Canyon county, and

James H. Hawley, W. E. Borah and W. A. Stone for the state.

AILSHIE, J.

The prisoner, Charles H. Moyer, applied to this court through his counsel, for a writ of habeas corpus requiring E. L. Whitney, warden of the state penitentiary, to produce the body of the prisoner at a time and place to be designated by the court, and to make true return of the cause or causes of his detention. A writ was thereupon issued and the warden, at the time designated, produced the body of the prisoner in court and made return that he was detaining him under order of the probate judge of Canyon county and for that purpose as the agent of the sheriff of Canyon county. The return contains a certified copy of the order made by the probate judge, wherein it recites that the Canyon county jail is an unfit place for the detention of the prisoner and orders and directs that he be temporarily detained in the state penitentiary at Boise City. The return further shows that on the 12th day of February, 1906, a complaint duly verified by Owen M. VanDuyn, prosecuting attorney in and for Canyon county, was filed with M. I. Church, probate judge of that county, charging the prisoner, Charles H. Moyer,with the crime of murder committed at Caldwell, Canyon county, on the 30th day of December, 1905. The return also shows that on the same date a warrant of arrest was duly issued out of the Probate Court of Canyon county for the apprehension and detention of the accused. The return endorsed on the warrant and made by the sheriff of Canyon county shows that the prisoner was on

the 21st day of February, 1906, arrested and taken before the court. It is further shown that at the time of making the return the grand jury of Canyon county was in session and that the prisoner was held subject to the order of the Disrtict Court in and for Canyon county and that he had been from time to time, by order of the court, taken into court to be present at the impanelling of the grand jury. Before the final hearing on the return to this writ, the warden made a supplemental return to the effect that on the 7th day of March, 1906, the grand jury in and for Canyon county found a true bill of indictment against the prisoner, charging him with the commission of the crime of murder, at Caldwell, in Canyon county, on the 30th day of December, 1905, and that the indictment was thereupon duly filed in court, and that thereupon a bench warrant issued for the arrest of the accused Charles H. Moyer, and that the same was served, and the prisoner was thereafter on the 9th day of March, arraigned before the court and the time for pleading to the indictment was fixed for March 16th; and that the prisoner was thereafter by the sheriff of Canyon county returned to the state penitentiary and temporarily placed in charge of the warden thereof for detention and is now held under such authority. The petitioner answered the return and supplemental return made by the warden, admitting all the material and essential facts contained in the return; he also pleaded further, separate and independent matter for the purpose of showing that his imprisonment and detention was illegal and ulawful. While quite voluminous, the substance of this additional and independent matter contained in

the answer is, that the petitioner is a citizen of the United States and of the state of Colorado, residing in the city and county of Denver, and that he has never been within the state of Idaho at any time since the 26th day of October, 1905, and that he was not in the state of Idaho on the 30th day of December, 1905, and was not a fugitive from the justice of the state of Idaho within the meaning of the federal Constitution and the act of congress providing for interstate extradition, and that he was wrongfully and unlawfully removed from the state of Colorado to the state of Idaho in pursuance of an unlawful combination and conspiracy entered into between the governors of the states of Idaho and Colorado, and the prosecuting attorney of Canyon county; that the governor of Colorado wrongfully and unlawfully honored the requisition of the governor of Idaho and wrongfully issued his warrant and order for the arrest of the prisoner by the authorities of the state of Colorado, and that the prisoner was neither given time nor opportunity to apply to either the state or federal courts for his discharge prior to his delivery to the authorities within the jurisdiction of the state of Idaho. Counsel for the state moved to strike from the answer of the petitioner all matters leading up to and involving the extradition of the petitioner on the ground that the same is sham and irrelevant matter. After hearing exhaustive argument this motion was sustained and it was announced from the bench at the time that a written opinion would thereafter be filed setting forth the views of the court on the questions presented.

It is proper to first observe that the extradition proceedings and process by and under which the prisoner was brought into this state appear in all respects regular and in due form.

With the foregoing statement of the case we will pass at once to a consideration of the questions of law involved.

We are of the opinion that after the prisoner is within the jurisdiction of the demanding state and is there applying to its courts for relief, he can not raise the question as to whether or not he has been, as a matter of fact, a fugitive from the justice of the state within the meaning of the federal Constitution and the act of congress. A careful and diligent examination of the many authorities touching upon this subject and the reasons that exist for invoking the aid of the writ in such cases, convince us that the question as to whether or not a citizen is a fugitive from justice is one that can only be available to him so long as he is beyond the jurisdiction of the state against whose laws he is alleged to have transgressed. It is a remedy which does not go to the merits of the case and does not involve the inquiry as to whether or not he is in fact guilty or innocent of the offense charged. It is a remedy that merely goes to the question of his removal from the jurisdiction in which he is found to the jurisdiction against the laws of which he is charged with offending. If these views be correct, and we believe they are, it follows that so soon as the prisoner is within the jurisdiction of the demanding state, both the reason and object for invoking this principle of law have ceased and can no longer have any application. It has been held that

it ceases to be a federal question so soon as the prisoner invokes its aid within the state from which he is alleged to have fled. (In re Cook, 49 Fed., 841.) It must also necessarily follow that the courts of the state demanding the prisoner have no jurisdiction to inquire into the acts of the executive of the state delivering the prisoner. The action and conduct of the chief executive of the state in which the prisoner was found and of all the executive and ministerial officers acting in aid of his warrant is a matter for the consideration of the courts of this state, subject to the reviewing authority of the federal courts in so far as the federal question is involved. The warrant of the chief executive of the state surrendering the prisoner, whether issued lawfully or unlawfully, has accomplished its purpose and becomes *functus officio* so soon as the prisoner is delivered into the jurisdiction of the demanding state and its validity and the regularity of its issuance thereupon cease to be questions open to the consideration of the courts of the demanding state.

The prisoner was regularly charged with the commission of a crime in Idaho and against her laws. The governor of Colorado honored the requisition from the governor of Idaho and thereupon duly and regularly issued his warrant for the arrest and surrender of the accused to the agent of the state of Idaho. This action of the Colorado governor was at least *quasi judicial* (In re Cook, 49 Fed., 841); it amounts to a determination that the accused was substantially charged with the commission of a crime and was a fugitive from justice. (Roberts vs. Reilly, 116 U. S. 80; 29 L. Ed., 544; Cook vs. Hart, 146 U. S.,

163; 36 L. Ed., 934.) The motives which prompted the governor of a state to take such action or make such determination are not proper subjects of judicial inquiry. Such inquiry would be opposed both to the plainest principles of public policy and the freedom of action by the executive within the constitutional authority of that department of government. Jurisdiction to take the action complained of is the test, and the jurisdictional facts are subject to review by the federal courts and courts of of the surrendering state where they are applied to before the state whose laws it is charged have been violated acquires jurisdiction of the person of the accused. In the latter case the object has been accomplished and as has been held in several cases, there is no process or authority for returning the prisoner to the state in which he was found. (Mahon vs. Justice, 127 U. S., 700; 32 L. Ed., 283, approved in Cook vs. Hart, 146 U. S., 183; 36 L. Ed., 939; In re Moore, 75 Fed., 834.)

One who commits a crime against the laws of a state, whether committed by him while in person on its soil or absent in a foreign jurisdiction and acting through some other agency or medium, has no vested right of asylum in a sister state. (Mahon vs. Justice, supra; Lascelles vs. Georgia, 148 U. S., 543; 37 L. Ed., 551; Ker vs. Illinois, 119 U. S., 436; 30 L. Ed., 421; In re Moore, 75 Fed., 824), and the fact that a wrong is committed against him in the manner or method pursued in subjecting his person to the jurisdiction of the complaining state and that such wrong is redressible either in the civil or criminal courts, can constitute no legal or just reason why he him-

self should not answer the charge against him when brought before the proper tribunal. The prisoner does not represent in his person the sovereignity of either the damanding or surrendering state and is in no position to speak for either; on the other hand, if any offense was committed in course of his rendition it was clearly an offense against the laws of one or both of those states; but neither state is here complaining. (People vs. Pratt, 78 Cal., 349; 20 Pac., 733.)

No case has been called to our attention, and, in fact, we have been unable to find any instance where the prisoner has alleged as a ground for his discharge a like state of facts to those set up in the answer in this case and to which the motion is here directed. We have, however, examined several authorities in which the same course of reasoning adopted by the courts, in holding that the prisoner should not be discharged, is equally, and as logically, applicable to the facts of this case.

Prof. Peabody, sometime lecturer on criminal law before the Harvard Law School, in his text on Interstate Extradition, at page 99, 19 Cyc., states the general principle touching the rights of prisoners illegally brought into a jurisdiction as follows: "It is not a cause for exemption from prosecution for a crime that the accused was illegally arrested in another state and unlawfully brought within the jurisdiction of the state against which he offended, he is not protected from the prosecution even if he is kidnapped in the other state and brought into the state without a semblance of right. It follows therefore that he is not wronged by being subjected to its juris-

diction, although the requisition proceedings were not strictly legal. As the state to which a person has been illegally brought may hold him to answer for his offenses against it, it may arrest and surrender him on extradition proceedings to answer for his offenses against another state. The state from which he was wrongfully taken has no redress except to demand the extradition of the abductors that they in turn may be prosecuted by it."

In Mahon vs. Justice, supra, a case in which a controversy arose between the states of West Virginia and Kentucky over the kidnapping of the prisoner Mahon from the state of West Virginia, Justice Field, after stating the nature of the controversy, said:

> "The only question, therefore, presented for our determination is whether a prisoner indicted for a felony in one state, forcibly abducted in another state, and brought to the state where he was indicted by parties acting without warrant or authority of law, is entitled under the Constitution or laws of the United States to release from detention under the indictment by reason of such forcible or unlawful abduction."

In passing upon the question thus stated, that distinguished jurist said:

> "As to the removal from the state of the fugitive from justice in a way other than that which is provided by the second section of the fourth article of the Constitution, which declares that 'a person charged in any state

with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime,' and the laws passed by congress to carry the same into effect—it is not perceived how that fact can effect his detention upon a warrant for the commission of a crime within the state to which he is carried. The jurisdiction of the court in which the indictment is found is not impaired by the manner in which the accused is brought before it. There are many adjudications to this purport cited by counsel on the argument, to some of which we will refer."

The opinion closes as follows:

"So in this case we will say that, whatever effect may be given by the state court to the illegal mode by which the defendant was brought from another state, no right, secured under the Constitution or laws of the United States was violated by his arrest in Kentucky and imprisoned there, upon the indictment found against him for murder in that state."

In re Cook, supra, the United States Circuit Court had under consideration the validity of an extradition granted by the governor where the party in fact had not been in the demanding state at the time the offense was committed, and the court, speaking of the validity of the executive warrant, said:

"His warrant, unassailed by competent authority, is complete justification for the arrest and surrender of the alleged fugitive. When so delivered by virtue of such warrant, his surrender is lawful, and the demanding state obtains rightful possession of his person, and may lawfully subject him to its criminal process for the offense charged. The executive warrant has then spent its force. It is no longer operative. The alleged offender is no longer subjected to deprivation of liberty by virtue thereof, but is rightfully held under the process of the state. When that has happened, no federal question remains. * * * The fact of flight may be in a sense jurisdictional to removal, as one says a criminal court has jurisdiction only of crime. But such court has jurisdiction to determine whether a certain act charged to have been committed is or is not a crime. Its decision therein, although erroneous, is not void. So here the jurisdiction to determine the fact of flight is lodged with the executive. He has jurisdiction of the subject-matter. His warrant is valid until his determination of the fact of flight is properly reversed. When, therefore, such valid warrant has been executed, the surrender thereunder is lawful, and the party lawfully subjected to the state jurisdiction."

The latter case was appealed to the Supreme Court, and in Cook vs. Hart, 146 U. S., 183; 36 L. Ed., 934, the lower court was affirmed, and Justice

Brown who wrote the opinion on appeal made the following observation:

> "It is proper to observe in this connection that, assuming the question of flight to be jurisdictional, if that question be raised before the executive or the courts of the surrendering state, it is presented in a very different aspect after the accused has been delivered over to the agent of the demanding state, and has actually entered the territory of that state, and is held under the process of its courts."

In ex parte Johnson, 167 U. S., 120; 42 L. Ed., 103, the court made the distinction between the service of civil process and that of criminal process where the party had been wrongfully brought into the jurisdiction, and said:

> "Indeed, there are many authorities which go to the extent of holding that in criminal cases a forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offense and presents no valid objection to his trial in such court. * * * The law will not permit a person to be kidnapped or decoyed within the jurisdiction for the purpose of being compelled to answer to a mere private claim, but in criminal cases the interests of the public override that which is, after all, a mere privilege from arrest."

To the same effect, see: Dow's Case, 18 Pa. St., 37; Ex parte Ker, 18 Fed., 167; State vs. Smith, 19 Am. Dec., 697; 12 A. & E. Ency. of Law, 607; Eaton vs. West Virginia, 91 Fed., 760; Kingen vs. Kelley, 3 Wyo., 571; 28 Pac., 38; 15 L. R. A., 177; Ex parte Barker, 13 Am. St. Rep., 17; 87 Ala., 4; 6 So., 80; State vs. Ross, 21 Iowa, 467; State vs. Patterson, 116 Mo., 505; Bookin vs. The State, 26 Tex. App., 121; 9 S. W., 737; State vs. Glover, 112 N. C., 896.

Counsel for petitioner lay much stress on the proposition that neither an individual nor the state can be allowed to gain an advantage by means of an unlawful or wrongful act. That proposition is true, but to gain an advantage means to obtain a superiority of position or opportunity which would not appear to have been done in such a case as this, admitting all the facts charged to be true. Where the state accuses a person of the commission of an offense against its laws, the mere apprehension of the accused, although in an unlawful manner, and subjecting him to the jurisdiction of the courts to answer the charge can not amount to a legal advantage any more than if the accused had voluntarily surrendered himself to the authorities. The wrongful or unlawful means employed in making an arrest, however criminal they might be, could not be chargeable to the sovereignty, which can commit no crime, but would be the crime of the individual who committed the act, and would furnish no reason or justification for discharging the prisoner when brought before the court. If, therefore, a crime should be committed by any person in abducting, apprehending or arresting the accused, such person may be held to answer in

the proper jurisdiction for the commission of the offense. But the commission of the latter offense does not expiate the former.

Numerous authorities are cited on behalf of petitioner to the effect that a lawful rendition can not be had of one who was not in fact within the demanding state when the offense is charged to have been committed. The latest and highest authority that has been brought to our attention on this phase of the case is Hyatt vs. New York, 188 U. S., 691; 47 L. Ed., 657; s. c., 172 N. Y., 176; 64 N. E., 825. As we have heretofore said, the question as to whether or not the prisoner was in fact a refugee from justice can not arise at this time in the case at bar. Except for the construction placed on the second clause of section 2, of the fourth article, of the Constitution of the United States, and section 5278, U. S., Revised Statutes, by the highest court of the land, we should undoubtedly incline to the belief that they were designed and intended to authorize the extradition of any person who has offended against the laws of one state and is thereafter found in another state. It would seem that by the language: "Who shall flee from justice," is rather meant a flight from a punishment—a penalty or condition which would follow capture and conviction—than a flight from a *place* or the *territorial limits* of the outraged commonwealth. The pursuing hand of justice demanding vindication and vengence is a much stronger inducement to flight than the mere discomforts of place or the horrors or dislike of state lines. While the belief just expressed is the unanimous view of this court as to the real purpose and intent of the extradition clause

of the federal Constitution, it amounts to the merest observation in this case and in no respect influences its decision. We are not unmindful of the fact that the almost uniform current of authority, both federal and state, is to the effect that the flight must be from a *place*, namely, from the *territorial limits* of the state demanding the prisoner. It is worthy of note, however, that under that line of authority, as was suggested on the argument of this case, an assassin on the Oregon bank of the great waterway that marks our western boundary might, by firing across the stream, murder numbers of our citizens and be exempt from extradition and go free from punishment. In this respect the views expressed by Mr. Justice Clark in the extraordinary case of State vs. Hall, 28 L. R. A., 293; 115 N. C., 811, are worthy of consideration.

Counsel place considerable stress on In re Robinson, 8 L. R. A., 398, a case where the Supreme Court of Nebraska ordered a prisoner discharged because he had been forcibly brought into the state without requisition process. That case does not meet the facts of the case at bar; besides, it seems to rest on the rule adopted in civil cases rather than that applied to criminal cases. The statement there made as to the current of authority on the question of interstate extradition leaves it open to the criticism that it is not a sound or carefully considered case. In fact, the weight of authority is entirely the other way, as will be seen from an examination of Lascelles vs. State of Georgia, 148 U. S., 537; 37 L. Ed., 552; Lascelles vs. The State, 90 Ga., 347; see 11, Rose's Notes (U. S.), page 239; s. c., 35, Am. St. Rep., 220; 16 S. E., 946.

The motion having been sustained, the case remains here on the answer of the warden, which is admitted to be true. The prisoner has been indicted on the charge of murder; and for the purposes of this case, whether as a principal or accessory, is immaterial under our statute (sections 7697 and 7698, R. S., and Territory vs. Guthrie, 2 Idaho, 432; as is also the question as to whether he was within or without the state at the time of the alleged commission of the offense (sections 6331 and 7481, R. S.). The proceedings appear regular on the face of the returns, and in conformity with the laws of this state, and since the prisoner is being held under process duly and regularly issued by a court of competent criminal jurisdiction, we are commanded by statute to remand him to custody. The writ is quashed and the prisoner is remanded to the custody of the officer.

Stockslager, C. J., and
Sullivan, J., concur.

IN THE SUPREME COURT OF THE STATE OF IDAHO.

IN RE WILLIAM D. HAYWOOD.

February Term, 1906. Filed April 14, 1906. Sol Hasbrouck, Clerk.

Application of William D. Haywood for a writ of habeas corpus. Writ issued and case heard and considered on the return and supplemental return of the officer and the answer of the petitioner. Writ quashed and prisoner remanded to the custody of the officer.

Fred Miller, John F. Nugent and Edmund F. Richardson, for the petitioner.

John J. Guheen, attorney general; Owen M. Van-Duyn, prosecuting attorney of Canyon county, and James H. Hawley, W. E. Borah and W. A. Stone for the state.

Per Curiam:

The facts in this case are substantially the same as In re Moyer just decided by this court, and upon the authority of that case and for the reasons therein stated, the writ is quashed and the prisoner remanded to the custody of the officer.

IN THE SUPREME COURT OF THE STATE OF IDAHO.

IN RE GEORGE A. PETTIBONE.

February Term, 1906. Filed April 14, 1906. Sol Hasbrouck, Clerk.

Application of George A. Pettibone for a writ of habeas corpus. Writ issued and cause heard and considered on the return and supplemental return of the officer and the answer of the petitioner. Writ quashed and prisoner remanded to the custody of the officer.

Fred Miller, John F. Nugent and Edmund F. Richardson for the petitioner.

John J. Guheen, attorney general; Owen M. Van-Duyn, prosecuting attorney of Canyon county, and James H. Hawley, W. E. Borah and W. A. Stone for the state.

Per Curiam:

The facts in this case are substantially the same as In re Moyer just decided by this court, and upon

the authority of that case and for the reasons therein stated, the writ is quashed and the prisoner is hereby remanded to the custody of the officer.

IN THE SUPREME COURT OF THE STATE OF IDAHO.

IN RE CHARLES H. MOYER. Habeas Corpus.

February Term, 1906.

I, Sol Hasbrouck, clerk of the Supreme Court of the state of Idaho, do hereby certify that the preceding and annexed contains a true and correct copy of the original opinion in the above entitled cause, on the 14th day of April, A. D. 1906, and now on file in my office.

Witness my hand and the seal of the court this 23d day of July, A. D. 1906.

SOL HASBROUCK,
Clerk.

(Seal)

By E. H. HASBROUCK,
Deputy Clerk.

FILE COPY.

Supreme Court of the United States

OCTOBER TERM, 1906.

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No. 249.

GEORGE A. PETTIBONE, Appellant,

vs.

JASPER C. NICHOLS.

No. 250.

CHARLES H. MOYER, Appellant,

vs.

JASPER C. NICHOLS.

No. 251.

WILLIAM D. HAYWOOD, Appellant,

vs.

JASPER C. NICHOLS.

Brief and Argument for Respondent.

JAMES H. HAWLEY,
W. E. BORAH,
Counsel for Respondent.

(20,191, 20,192 and 20,193.)

Supreme Court of the United States

OCTOBER TERM, 1906.

No. 249.

GEORGE A. PETTIBONE, Appellant,

vs.

JASPER C. NICHOLS.

No. 250.

CHARLES H. MOYER, Appellant,

vs.

JASPER C. NICHOLS.

No. 251.

WILLIAM D. HAYWOOD, Appellant,

vs.

JASPER C. NICHOLS.

Brief and Argument for Respondent.

STATEMENT OF THE CASE.

The statement of the case made in the brief of appellants is in such form that it may possibly be misleading, and we believe it proper to restate the matter as part of respondent's brief.

As stated at page 2 of appellant's brief the appeals hereing are from orders denying relief under habeas corpus proceedings in the Circuit Court of the United States for

the District of Idaho; and as likewise stated in appellants' brief, a writ of error has been sued out by each of the appellants from this Court to the Supreme Court of Idaho from a judgment rendered in habeas corpus proceedings in that tribunal, and under the stipulation of the respective parties the cases here on writ of error being similar in all respects to the cases now being considered, are to be governed by the opinion of this Court in these cases.

The transcript of record in each of the cases on appeal from the United States Circuit Court for the District of Idaho, are similar in all essential particulars, and therefore, but one brief is filed, which applies to all of the cases.

The petition upon which application was made in behalf of each of the appellants for writs of habeas corpus are similar in all essential details, and are found in the transcript, pages 1 to 16, inclusive. Taking the statement in No. 249, we find the petition states in paragraphs A, B and C, page 1, that the petitioner, George A. Pettibone, is a resident and citizen of Colorado, and that on February 17th, 1906, had been a resident of said State for more than five years, and had not been in the State of Idaho for a period of more than ten years theretofore.

Paragraph D on the same page shows that on the 30th of December, 1905, Frank Steunenberg, a resident of the town of Caldwell in Canyon County, Idaho, came to his death by reason of the explosion of a bomb.

Paragraph E, page 2, discloses the fact that Owen M. Van Duyn, afterwards alleged to be the Prosecuting Attorney of said Canyon County, Idaho, on February 12th, 1906, swore to a complaint before the Probate Judge of said Canyon County, a copy of which is set forth, and is in the usual form, charging appellant with having ex-

ploded the bomb in question, thus causing the death of Mr. Steunenberg. A warrant of arrest was issued, and as set up in paragraph F, pages 2 and 3 of the record, command the arrest of the appellant Pettibone, the warrant being in the usual form. On the same day said Prosecuting Attorney applied for a requisition to be issued by the Governor of the State of Idaho to the Governor of the State of Colorado for the appellant Pettibone. This application is set up in full, is in the usual form, and is contained in paragraph G, pages 3 to 5 of the transcript.

On the same day Mr. Van Duyn prepared an affidavit in support of the application for the requisition, which is also set up in full on page 5 of the transcript, and is in the usual form.

Upon these papers the Governor of the State of Idaho demanded of the Governor of the State of Colorado the arrest of the appellant, said demand being in the usual form, and is found on page 6 of the transcript.

The petition then charges, in paragraph K, page 6, that in the above matters said Governor and said Prosecuting Attorney were counseled and advised by Attorney James H. Hawley of Boise City, Idaho, and that in all of said proceedings the said parties knew that the said petitioner was not in Idaho on December 30th, 1905. The petition then alleges (pp. 6 and 7) *upon information and belief of* the petitioner, that the parties mentioned conspired together to avoid the Constitution of the United States and the act of Congress made pursuant thereto, providing for the extradition of fugitives from justice; and further charges, that in pursuance of such conspiracy, the parties interested intending thereby to kidnap and forcibly take the body of the petitioner from the State of Colorado, and

remove it to the State of Idaho, procured the party named as agent for the State of Idaho, together with said Hawley, to go to Denver, in said State of Colorado, and that said Mills and said Hawley did so go to said City of Denver, and there enter into another conspiracy with the Governor of the State of Colorado, and others unknown, and in accordance with the terms of said conspiracy, caused the arrest of petitioner after business hours during the night of Saturday, February 17th (pp. 6 and 7 Trans.), and then proceeds to state that appellant Charles H. Moyer was arrested about 8:45 o'clock on the evening of said day, and appellant Haywood was also arrested about that time.

The petition then goes on to state (pp. 8 and 9, Trans.), upon the information and belief of appellant, that the arrests were made pursuant to the conspiracy between the Governor of Colorado and said Hawley and Mills, and the previous conspiracy of said parties with the Governor of Idaho, for the purpose of preventing the issuance of a writ of habeas corpus; and follows this statement up with an allegation that on the morning of the 18th of February, the appellant and the other parties named were taken from the said City of Denver on a special train, and removed to Boise City (p. 9).

Said petition then (pp. 10 to 17, inclusive.) treats of the application of appellant to the Supreme Court of the State of Idaho asking for writ of habeas corpus, and showing that the relief requested had been refused by that tribunal.

Upon this petition, writ of habeas corpus was issued from the United States Circuit Court (Trans. p. 16) directed to the respondent, who made return to the writ (Trans. pp. 18, 19 and 20). By stipulation of the parties

(Trans. p. 24) it was agreed that the petition of the appellant should be considered as his answer to the return. Thereupon, respondent moved to strike out the answer to the return upon the grounds that it was sham and irrelevant, and also demurred to the answer upon the grounds that it did not state facts sufficient to constitute a defense to the allegations made in the return (Trans. p. 25). After argument the Court sustained the position of respondent and struck out the answer to the return, sustained the demurrer and quashed the writ (p. 26).

Brief and Argument.

The statement made in the petition of appellant upon which the writ of habeas corpus was granted shows conclusively that in all matters pertaining to the extradition of appellant the usual forms of procedure were adopted. The contention of appellant, however, is that conceding the proceedings, both in the State of Idaho and in the State of Colorado, to have been regular, these proceedings were the result of a conspiracy between the Governors of the two States, the Prosecuting Attorney of Canyon County, and the other parties named and therefore should be voided. The petitions in each case are signed and verified by the appellants themselves. The allegations in regard to conspiracy and collusion are made upon information and belief. It will be conceded, we apprehend, upon the authorities cited by appellants in their brief, that without this charge of collusion and conspiracy, the proceedings being regular upon their face, and the appellants being in the custody of the authorities of the State of Idaho thereunder, the writ of habeas corpus was properly quashed by the Circuit Court. We submit that the

position of the appellants before the Courts is not strengthened in the slightest degree by reason of the allegations in the petitions in regard to conspiracy, collusion and fraud between the officers mentioned, and would not have been even if these had been positive averments, instead of being stated upon information and belief; such statements could not be regarded except as conclusions upon the part of the petitioners, and the courts in looking into the real facts of the case would not be influenced in the slightest degree by reason of such allegations, but would look to the facts themselves as shown by the record and then come to a conclusion unaided by any opinion or conclusion made by the petitioners as to whether or not a fraud had been perpetrated or the actions specified had been the result of collusion and conspiracy. We submit that the facts as shown in the record, divested of these oft repeated charges of collusion, conspiracy and fraud, do not warrant any conclusion upon the part of this or any Court that the officers charged with such serious offenses acted otherwise than in good faith and in the line of their official duty. What a flimsy showing it is upon which the Governors of two States of the Union are charged with a most serious offense—a conspiracy, with an attempt to deprive the petitioners of their legal rights, and to kidnap them from the State of Colorado and illegally bring them into the State of Idaho for the purpose of trying them for a capital offense.

The brief of the learned counsel for appellants argues apparently not the real facts as shown by the record, but the conclusions of their clients, which are made part of the record; and it is these charges of conspiracy and fraud upon which their entire argument is based. It is well,

therefore, at the inception of our argument, to review as briefly as possible the facts presented by the record and ascertain from those facts whether these serious charges against the officials named can be sustained and an inference even can be fairly drawn from those facts of wrong doing upon the part of either or any of them.

The complaints filed in the Probate Court of Canyon County, Idaho, charging each of the appellants with the murder of ex-Governor Steunenberg, are each in the due and usual form; the warrants issued thereon, and the affidavit of the Prosecuting Attorney, are in the same due form; every requirement of law was satisfied by the showing made to the Governor of the State of Idaho requesting him to make the demand upon the Governor of the State of Colorado for the appellants; upon such a showing the Governor of Idaho could not fail to act, as it was clearly his duty to comply with the request; he did nothing out of the usual and ordinary course of proceedure in such cases; he appointed an agent, as requested by the Prosecuting Attorney, as was his duty under the law, and that agent proceeded to the State of Colorado and made the necessary demand upon the Chief Executive of that State. Where in this record is there warrant for the conclusions of the appellants in their petitions, charging conspiracy and fraud upon the part of the Governor of Idaho? Where in this record is there justification for the contention made by the learned counsel for appellants that a conspiracy had been formed, and that by reason thereof the legal rights of their clients have been impaired?

These papers, in due form, were presented to the Governor of the State of Colorado, and he, according to the record itself, acted in the usual manner upon the presen-

tation of a request of this kind. We again ask in all seriousness, taking the facts of the record, and not the conclusions of appellants made upon information and belief, where is there any foundation for these charges of conspiracy and fraud upon the part of the Governor of the State of Colorado made by the appellants in their petitions and so often repeated by appellants' counsel in their brief? Reckless abuse of high officials made by interested counsel and based simply upon the opinions of persons charged with the most serious crimes, can, it strikes us, hardly be tolerated by the Courts; and we respectfully submit that counsel have overstepped the boundaries of propriety in assuming throughout in their brief that the Governors of these two States have in their actions in this regard been influenced by improper motives, and been guilty of criminal misconduct.

The only matter referred to in this regard that, to our minds, really demands consideration, are the complaints made before the Probate Judge charging appellants with the crime of murder, and the affidavit of Prosecuting Attorney Van Duyn accompanying these complaints, when the application was made to the Governor of Idaho asking him to demand the arrest of the appellants upon the charge made in the State of Colorado.

Section 7697 of the Revised Statutes of the State of Idaho reads as follows:

"The distinction between an accessory before the fact "and a principal, and between principals in the first and "second degree, in cases of felony, is abrogated; and all "persons concerned in the commission of a felony, whether "they directly commit the act constituting the offense "or aid and abet in its commission, though not present,

"shall hereafter be prosecuted, tried and punished as prin-
"cipals, and no other facts need be alleged in any indict-
"ment against such an accessory than are required in an
"indictment against his principal."

Section 7698 of said Revised Statutes reads as follows:

"An accessory to the commission of a felony may be in-
"dicted, tried and punished, though the principal may be
"neither indicted nor tried."

In Territory vs. Guthrie, 2 Idaho, 432, the Supreme Court of the Territory, passing upon the question of pleadings involved in a charge against a person who, under the common law would have been an accessory, expressly states that all persons aiding or abetting in the commission of an offense are treated as principals and should be prosecuted and punished as such. Under these statutes, and under the decisions in Idaho and the uniform practice there also, a party who had formerly been called an accessory, instead of being so charged, must be proceeded against as if he by his own hands had actually committed the offense. Under the form of pleadings as prepared, Mr. Van Duyn in swearing to the complaint and affidavit complained of in the petition, was within the law, acted under the statutes of Idaho, and made his charge in the manner prescribed thereby. Counsel for appellants in their brief choose to make a personal attack on Mr. Van Duyn and charge him with having committed perjury in making the affidavit complained of. They seemingly forget the definition of the crime of perjury, and that in order to be chargeable with such an offense the party charged must wilfully and contrary to his oath state as true any material matter which he knows to be false. How, in the face of these provisions of the

statutes and of the decisions in question, the learned counsel for appellants can excuse their unwarranted charge against a high public official charged with the prosecution of offenses within his district, is beyond our comprehension. If Mr. Van Duyn erred in this matter it is evident that he acted in good faith, and there are no extraneous matters alleged in the petition, or even hinted at, that would justify the charge made against him.

While we have devoted considerable space to the discussion of these matters of good faith upon the part of the officers attacked in the petitions in question, and in the brief of counsel for appellants, we have done so for the reason that we could not permit to go unchallenged statements charging these gentlemen with dereliction of official duty and with the commission of offenses, which, if proven, would consign them to terms of imprisonment. The legal propositions before the Court do not, in our judgment, depend in the slightest degree upon the questions of wrong doing on the part of the officers entrusted with the execution of the laws of the State of Idaho or of Colorado. In view of the decision cited herein by appellants themselves, we are constrained to believe that in the absence of these charges of wrong doing, that they would hardly be before this Court asking for a reversal of the decision of the Circuit Court. We urge that these decisions cited by counsel, and commented upon by them, would, without question, show the fallacy of their position taken, if it were not for the extraordinary charges they have seen fit to make in connection with the officers of the two States mentioned. A number of other assertions made in the answer to the return that have been commented upon by the learned counsel for appellants and will un-

doubtedly be referred to in their oral argument. It is charged that a special train was provided for taking the petitioners from the State of Colorado; that they were only retained a few hours in that State after their arrest. We ask in all seriousness what figure does that cut? By virtue of what statute or provision of law is a person who becomes legally the custodian of another charged with crime compelled to wait any certain or definite length of time before proceeding with his prisoner to the place wherein the crime is charged against him? Is it the duty of the arresting officer to make public, to shout from the house tops, the fact that he had made the arrest or proclaim the matter in the public press? To so arrange things that possibly weeks would elapse before he be permitted to take his prisoner to the jurisdiction wherein he is charged? What legitimate complaint, we urge in all seriousness, can be based upon the proceedings as stated in the answer to the return? It is charged that these parties were retained only a few hours in the State of Colorado after their arrest for the purpose of preventing the issuance of a writ of habeas corpus. This, however, is simply a conclusion, not the statement of a fact. If it was alleged in the answer to the return that the appellants, or either of them, had asked permission to see counsel and been refused that permission, there might be some legitimate grounds of complaint of ill usage, but under the circumstances, we submit, there is nothing to justify the assertions of counsel in their brief upon these matters.

The learned counsel for appellant carefully, and, it would seem, designedly, state in a number of places in their brief that the respondent admits all of the allegations made in the petition herein. It is true that a de-

murrer, as well as a motion to strike, was made by respondent in the court below and sustained by the Court. The demurrer, perhaps, was unnecessary, as the motion to strike was really the important matter, and upon its being granted would have caused the writ to be quashed, even if a demurrer had not been filed. Counsel say at page 13 of their brief, "The demurrer filed in the Circuit Court admits absolutely and without equivocation the charge in its entirety," the charge being the malfeasance of the executives of the States of Colorado and Idaho. We insist that the demurrer does not so admit. A demurrer is simply an allegation that, admitting the facts of the preceding pleading to be true as stated by the party making it, he has yet shown no cause why the party demurring should be compelled by the Court to proceed further.

Reid vs. Field, 83 Va. 26.

It raises an issue not of fact, but of law, and is a formal mode of disputing the sufficiency in law of the pleadings of the other side; but when a demurrer admits all the allegations, it admits nothing but what is material and well pleaded; moreover, a demurrer is only a technical admission, and does not involve any confession. Conclusions of law are never admitted.

Dennison Manu. Co. vs. Thomas Manu. Co. 94 Fed. 651.

The petitions herein were seemingly drawn upon the assumption that appellants were held by respondent by virtue of the process mentioned issued from the Probate Court of Canyon County. The return, however, shows (Trans. p. 19) that the appellants were being held by

reason of a bench warrant issued on March 9th, 1906, and served upon appellants on that day, which bench warrants was based on an indictment by the Grand Jury of said Canyon County presented to the Court on March 7th, 1906. This part of the return was not challenged by appellants in their answers, and stands therefore as a conceded fact. We urge, therefore, that even if the appellants could have been granted relief from the original arrest, they could not urge the matters complained of in the petitions against their detention under the bench warrent mentioned.

Suppose, for argument's sake, they had been discharged under the habeas corpus proceedings in the Supreme Court of Idaho, this assuredly would not have been a bar to their again being arrested under an indictment found the day after. And we urge that in the event of the matters stated in the petitions being considered sufficient to cause the discharge of appellants from custody upon the warrants issued from said Probate Court, still it does not follow they could have been successfully urged in a new proceeding seeking their discharge from arrest under the bench warrant based on the indictment. As stated by Mr. Justice Storey, in ex parte Milburn, 9 Peters, 704:

"A discharge of a party under a writ of habeas corpus "from the process under which he is imprisoned, discharges "him from any further confinement under the process, but "not under any other process which may be issued against "him under the same indictment."

If this is correct, the rule would apply with intensified force where the release was from a warrant based on a complaint before a committing magistrate merely, and an indictment was afterwards found.

While we do not concede that the procedure, or any part

of it, surrounding the arrest of appellants in Colorado and their taking to Idaho was illegal in any way, and while on the contrary we urge that every step taken in the matters complained of was strictly in accordance with law, still we will assume for argument's sake that the procedure was unlawful, and then consider the next question that would necessarily arise—

What is the effect of an unlawful or unjustifiable taking of a person charged with crime from the State wherein he lives or has found refuge?

There is no right of asylum in a sister State by one who commits a crime against the laws of a State either while personally on its soil or while in a foreign jurisdiction and acting through some other agency or medium.

Mahon vs. Justice, 127 U. S. at page 715.
Lascelles vs. Georgia, 148 U. S. 543.
Ker vs. Illinois, 119 U. S. 436.
In re Moore, 75 Fed. Rep. 824.

Mahon vs. Justice, *supra,* was a controversy between the States of West Virginia and Kentucky over the kidnaping of Mahon from West Virginia and his forcible taking into Kentucky for trial. The first State mentioned was aggrieved by this action and through its Governor inaugurated the proceeding. In the cases under consideration here we should constantly bear in mind that there is no question between the two State affected, and the only complaint comes from the persons extradited.

Mr. Justice Field, who delivered the opinion, in commencing his decision, says:

"The Governor of West Virginia, in his application on "behalf of the State for writ of habeas corpus to obtain

"the discharge of Mahon and his return to that State, pro-
"ceeded upon the theory that it was the duty of the United
"States to secure the inviolability of the territory of the
"State from the lawless invasion of persons from other
"States, and when parties had been forcibly taken from
"her territory and jurisdiction to afford the means of
"compelling their return; and that this obligation could
"be enforced by means of the writ of habeas corpus as the
"Court in discharging the party abducted could also di-
"rect his return to the State from which he was taken or
"his delivery to persons who would see that its order in
"that respect was carried out."

And after having made the statement of the controversy the learned justice says:

"The only question, therefore, presented for our determi-
"nation is whether a person indicted for a felony in one
"State, forcibly abducted from another State and brought
"to the State where he was indicted, by parties acting
"without warrant or authority of law, is entitled under
"the Constitution or laws of the United States, to release
"from detention under the indictment by reason of such
"forcible and unlawful abduction. Section 753 of the Re-
"vised Statutes declares that 'the writ of habeas corpus
"shall in no case extend to a prisoner in jail, unless where
"he is in custody under or by color of the authority of
"the United States, or is committed for trial before some
"court thereof; or is in custody for an act done or omitted
"in pursuance of a law of the United States, or of an order,
"process, or decree of a court or judge thereof; or is in
"custody in violation of the Constitution, or of a law or
"treaty of the United States.'"

* * * * * * *

"As to the removal from the State of the fugitive from "justice in a way other than that which is provided by "the second section of the fourth article of the Constitu- "tion, which declares that 'a person charged in any State "with treason, felony, or other crime, who shall flee from "justice, and be found in another State, shall, on demand "of the executive authority of the State from which he fled, "be delivered up, to be removed to the State having juris- "diction of the crime,' and the laws passed by Congress to "carry the same into effect—it is not perceived how that "fact can affect his detention upon a warrant for the "commission of a crime within the State to which he is "carried. The jurisdiction of the Court in which the in- "dictment is found is not impaired by the manner in "which the accused is brought before it. There are many "adjudications to this purport cited by counsel on the "argument to some of which we will refer."

And the distinguished jurist concludes his opinion by saying:

"So in this case, it is contended that, because under the "Constitution and laws of the United States a fugitive "from justice from one State to another can be sur- "rendered to the State where the crime was committed, "upon proper proceedings taken, he has the right of asy- "lum in the State to which he has fled, unless removed in "conformity with such proceedings, and that this right "can be enforced in the courts of the United States. But "the plain answer to this contention is that the laws of "the United States do not recognize any such right of asy- "lum, as is here claimed, or the right of the fugitive from "justice in any State to which he has fled; nor have they, "as already stated, made any provision for the return of

"parties who, by violence and without lawful authority, "have been abducted from a State. There is, therefore, no "authority in the Courts of the United States to act upon "any such alleged rights. In Ker vs. Illinois the Court "said that the question of how far the forcible seizure of "the defendant in another country, and his conveyance by "violence, force or fraud to this country could be made "available to resist trial in the State Court for the offense "charged upon him, was one which it did not feel called "upon to decide, for in that transaction it did not see that "the Constitution, or laws, or treaties of the United States "guaranteed to him any protection. So in this case we "say that, whatever effect may be given by the State Court "to the illegal mode in which the defendant was brought "from another State, no right, secured under the Consti- "tution or laws of the United States, was violated by his "arrest in Kentucky, and imprisonment there, upon the in- "dictments found against him for murder in that State."

Justice Bradley dissented from the above opinion on the ground that the restoration of Mahon had been demanded by West Virginia, saying:

"He is not in the situation of a criminal who has been "abducted from a State which takes no interest in his "case."

So it is to be noted that in this particular case, at bar that Colorado, in contradistinction to West Virginia, not only does *not* demand restoration of the defendants, not only *"takes no interest"* in their restoration, but, as the record shows, acquiesces in their removal to Idaho by the express and overt act of honoring the requisition of the Governor of Idaho and issuing the warrant of arrest thereon.

In Ker vs. Illinois, 119 U. S. 436, the petitioner had

pleaded in abatement to an indictment for larceny in the Criminal Court of Cook County, that he had been kidnaped from the City of Lima, in Peru, forcibly placed on a vessel of the United States in the harbor of Callao, carried to San Francisco and sent from there to Illinois upon a requisition made upon the Governor of California. After disposing of the point that he had not been deprived of his liberty without "due process of law," the Court intimated in reply to an objection that the petitioner was not a fugitive from justice in the State of California, that "when the Governor of one State voluntarily surrnders a "fugitive from justice of another State to answer for his al- "leged offenses, it is hardly a proper subject of inquiry on "the trial of the case to examine into the details of the pro- "ceedings by which the demand was made by the one State "and the manner in which it was responded to by the other. "* * * The question of how far his forcible seizure in an- "other country and transfer by violence, force or fraud to "this country, could be made available to resist trial in "the State Court for the offense now charged upon him, is "one we do not feel called upon to decide, for in that trans- "action we do not see that the Constitution or laws or "treaties of the United States guarantee him any protec- "tion. There are authorities of the highest respectability "which hold that such forcible abduction is no sufficient "reason why the party should not answer when brought "within the jurisdiction of the Court which has the right "to try him for such an offense. * * * *However this may "be, the decision of that question is as much within the "province of the State Court as a question of common law, "or of the law of nations, of which that Court is bound to "take notice, as it is of the courts of the United States."*

Opinion of Justice Brown in Cook vs. Hart, 146 U. S. 186, commenting on the case of Ker vs. Illinois, cites the above quotation with approval.

These cases (Ker vs. Illinois and Mahon vs. Justice, *supra*,) may be considered as establishing two propositions: 1. That this Court will not interfere to relieve persons who have been arrested and taken by violence from the territory of one State to that of another, where they are held under process legally issued from the courts of the latter State. 2. That the question of the applicability of this doctrine to a particular case is as much within the province of a State Court as a question of common law or of the law of nations, as it is of the Courts of the United States.

In re Cook, 49 Fed. Rep. 833, the question under consideration was the validity of an extradition that had been granted, although the person against whom it was directed was not at the time of the commission of the offense in the demanding State. The validity of the warrant issued by the Governor of the demanding State became a matter of importance and Judge Jenkins, at pages 840 and 841, says:

"We are of opinion, that the contention in behalf of pe-
"titioner can not be sustained. The vice of this position is
"in the assumption that the fact of flight is jurisdictional,
"in the sense that executive action is void if, in point of
"fact, the demanded person be not a fugitive from justice.
"The power to act upon a given state of facts, and to de-
"cide whether that state of facts exists, constitutes juris-
"diction. The decision therein is conclusive until prop-
"erly set aside. The Constitution and the Act of Con-
"gress have lodged with the executive of the State upon

"whom proper demand is made for one alleged to be a "fugitive from justice the jurisdiction to determine wheth- "er the person so charged be such fugitive, and his determ- "ination is sufficient to justify the surrender. He has, by "virtue of the law and of the action of the executive of "the demanding State, jurisdiction of the subject matter. "He has jurisdiction of the person of the petitioner by "virtue of his presence within the State. His determina- "tion partakes of the nature of a judicial proceeding. It "is true, his action is ex parte. Therefore, it is that the "courts will review his determination. But that fact is "not availing to destroy jurisdiction. He may err, but— "to use the expression of Chief Justice Ryan—he had " 'jurisdiction to commit the error.' His determination of "the fact of flight, evidenced by the issuing of his warrant, "suffices to justify the removal until the presumption in "its favor is overthrown by contrary proof in a proper pro- "ceeding. (Roberts vs. Reilly, 116 U. S. 80-95, 6 Sup. Ct. "Rep. 291.) His warrant, unassailed by competent au- "thority, is complete justification for the arrest and sur- "render of the alleged fugitive. Where so delivered by "virtue of such warrant, his surrender is lawful, and the "demanding State obtains rightful possession of his per- "son, and may lawfully subject him to its crimnial pro- "cess for the offense charged. The executive warrant has "then spent its force. It is no longer operative. The al- "leged offender is no longer subjected to deprivation of "liberty by virtue thereof, but is rightfully held under the "process of the State. When that has happened, no fed- "eral question remains. If the fact of flight be jurisdic- "tional in the sense that it must exist as essential to the "validity of any action by the executive, then it always

"must remain open to inquiry as well after surrender as "before; as well after trial and conviction as before; as "well after sentence as before; as well during imprison- "ment upon conviction and sentence as before surrender "and trial, for the reason that upon such postulate the "executive would not have jurisdiction because he so de- "termined; and any inquiry by habeas corpus—the only "means of review of his decision—would not bar another "writ. In such case, also, the officer executing the warrant "of the executive would not be justified by the writ, but "by the jurisdictional fact of flight upon which the writ "is predicated, and which, if the jurisdiction did not exist "would be mere waste paper. Such confusion, necessarily "resulting from such holding, is not to be lightly enter- "tained. It can not be assumed that any such meaning of "the constitutional provision or the act of Congress was "possible to the minds of the framers. The fact of flight "may be in a sense jurisdictional to removal, as one says "a criminal court has jurisdiction only of crime. But such "court has jurisdiction to determine whether a certain act "charged to have been committed is or is not a crime. It's "decision therein, although erroneous, is not void. So "here, the jurisdiction to determine the fact of flight is "lodged with the executive. He has jurisdicton of the "subject matter. His warrant is valid until his determi- "nation of the fact of flight is properly reversed. When, "therefore, such valid warrant has been executed, the sur- "render thereunder is lawful, and the party lawfully sub- "jected to the State jurisdiction."

The case was appealed to this Court and entitled Cook vs. Hart, 146 U. S. 183. The decision of the lower Court was affirmed, and Mr. Justice Brown, delivering the opin-

ion of the Court, in referring to the very question which is involved here, the right of the extradited person to ask relief in the courts of the demanding State, says:

"It is proper to observe in this connection, that assum-"ing the question of flight to be jurisdictional, *if that* "*question be raised before the executive or the courts of* "*the surrendering State,* it is presented in a very different "aspect after the accused has been delivered over to the "agent of the demanding State, *and has actually entered* "*the territory of that State and is held under the process* "*of its courts.*"

To the same effect is ex parte Johnson, 167 U. S. 120, where the distinction between service of civil process and criminal process upon persons unlawfully brought into the jurisdiction was being considered, and the following language used in reference thereto:

"There are many authorities which go to the extent of "holding that in criminal cases a forcible abduction is no "sufficient reason why the party should not answer when "brought within the jurisdiction of the Court which has "the right to try him for such an offense and presents no "valid objection to his trial in such court. * * * The law "will not permit a person to be kidnaped or decoyed with-"in the jurisdiction *for the purpose of being compelled* "*to answer to a mere private claim,* but in criminal cases "the interests of the public override that which is, after "all, *a mere privilege from arrest.*"

Upon the authority of these decisions and the others hereinafter cited we urge that the question as to how the accused person has come within the State wherein the crime was committed can not be inquired into by the courts of such State. It is not a cause of exemption from

prosecution for a crime that the accused was illegally arrested or unlawfully brought within the jurisdiction.

13 Cyc. Law & Pro. 99.
12 Ency. of Law, 607.
Church on Habeas Corpus, 461.
Cook vs. Hart, 146 U. S. 708.
Ex parte Ker, 18 Fed. 167.
Ex parte Baker, 13 Am. St. 17.
State vs. Smith, 19 Am. Dec. 679.
State vs. Ross, 21 Iowa, 467.
Dow's Case, 18 Pa. St. 37.

All of the above cases are direct and certain, leave no room for doubt as to the law, and completely destroy the appellants' chances for relief in this proceeding .

What necessarily follows? The parties are in Idaho; the reasons for their being there are not legitimate subjects of inquiry in this proceeding, and if they were, the proceedings are absolutely regular on their face; the questions of good faith on the part of the officers, of collusion, of conspiracy, can not be inquired into; what is proposed to be done? What relief can be extended? Is it expected this Court can put the defendant in statu quo? Will it be urged that this Court can order these appellants to be taken back to Colorado, and there thresh out the question of extradition? They were brought to Idaho on the strength of complaints before the Probate Court of Canyon County charging them with murder; they are held now, not upon such complaints, but upon indictment found after they were taken to Idaho and upon which they were taken into custody. (Trans. p. 19.)

No case is here presented that can be properly said to

come within the exception to the prohibition contained in Section 753 of the Revised Statutes of the United States, or which will authorize the issuance of the writ by a United States Court.

Ker vs. Illinois, 119 U. S. 436-442,444 (30, 421-424.)
State vs. Brewster, 7 Vt. 118.
Dow's Case, 18 Pa. 37.
Re Miles, 52 Vt. 609.
Mahon vs. Justice, 127 U. S. 707-712 (32, 285-287).
Re Mahon, 34 Fed. 525-528-531.

There is no limitation or restriction upon the crime for which a man may be extradited in interstate extradition; that duty is equally imperative as to all crimes, and *no right of return is provided for or necessarily implied.*

2 Moore Extradition, Secs. 643-644.
Re Noyes, 17 Alb. L. J. 407.
Ham vs. State, 4 Tex. App. 645.
Harland vs. Washington, 3 Wash. Terr. 153.
Dow's Case, 18 Pa. 39.
State vs. Stewart, 60 Wis. 587; 50 Am. Rep. 388.
Ex parte Barker, 87 Ala. 4.
William vs. Weber, 1 Colo. App. 191.
State vs. Brewster, 7 Vt. 120.
Adriance vs. La Grave, 59 N. Y. 110; 17 Am. Rep. 317.
U. S. vs. Caldwell, 8 Blatchf. 133.
U. S. vs. Lawrence, 13 Blatchf. 299-307.
Peo. vs. Rowe, 4 Park. Crim. Rep. 253.
Re Miles, 52 Vt. 609.
Mahon vs. Justice, 127 U. S. 700.

We also desire to call the attention of this Court, upon all the points argued herein, to the well considered opinion of the Supreme Court of Idaho in re Charles H. Moyer, printed in the appendix to appellants' brief, commencing at page 58 thereof.

The Court will not inquire into the legality of arrest. That the accused is in court is sufficient to require him to answer the indictment against him.

Am. & Eng. Ency. of Law, Vol. 12, page 598.
Ex parte Scott, 9 B. & C. 446; 17 E. L. C. 416.
Ker vs. Illinois, 119 U. S. 436-442-444 (30, 421-424).
State vs. Kealy, 89 Iowa, 94.
State vs. Patterson, 110 Mo. 505.
Mahon vs. Justice, 127 U. S. 700.
State vs. Smith, 1 Bailey L. (S. Car.), 283; 19 Am. Dec. 679.
Matter of Noyes, 17 Alb. L. J. 407.
Ex parte Barker, 87 Ala. 4; 13 Am. St. Rep. 17.
State vs. Ross, 21 Iowa, 467.
Dow's Case, 18 Pa. St. 37.

From the authorities cited we must conclude, irrespective of the methods pursued in securing the person wanted that after the requisition has been honored, and the prisoner is within the jurisdiction of the demanding State, complaint comes too late when relief is asked for in the courts of the demanding State questioning the regularity of the proceedings.

Mahon vs. Justice, *supra*.

And when that has happened no Federal question remains.

In re Cook, 49 Fed. 841.

Further approved of in Cook vs. Hart, 146 U. S. 163; 36 L. Ed.

What would be the effect if the charges of the appellants were conceded to be true and the Governors of both Idaho and Colorado had violated the law?

The contention of appellants is that these cases are *sui generis;* that in no other cases that can be called to the attention of the Court has the unwarranted removal of the accused from the State wherein he was found been effected by reason of the officers intrusted with the execution of the laws having acted in an unlawful or improper manner; and that the decisions holding that the kidnaping of a person charged with crime and his forcible removal to the State wherein the crime is alleged to have been committed do not apply where the executive officers of either of the States affected are parties to the unlawful removal.

Such position becomes necessary in view of the decisions of this Court in Ker vs. Illinois, *supra,* and Mahon vs. Justice, *supra,* but can not be maintained successfully. The attempt to distinguish these cases from the two cases mentioned is based upon the fact that in both of the cases cited the accused persons were brought within the jurisdiction of the trial State by persons who had kidnaped them and forcibly abducted them without process from the State where they were found, and that the trial State had not acted as in these cases, under legal process, or been in any way a party to the abduction; that the two cases cited involved matters of tort for which the injured parties could sue the tort-feasors, while in these cases the officers charged with wrong doing were acting under and by virtue of an act of Congress but intentionally violating both the letter and spirit of the act.

We can not understand the difference in principle between cases of kidnaping by unauthorized persons and cases wherein the extradition is conducted under the forms of law but through mistake or intentionally the Governor of either the demanding or surrendering State has failed in his duty. The Governor upon whom the demand is made must determine for himself, in the first instance, whether the demanded person is a fugitive from justice.

Ex parte Reggel, 114 U. S. 642.
Roberts vs. Reilley, 116 U. S. 80.

And then, if the request of the demanding State is granted, the accused person can appeal to the courts of such State for protection and relief; but we fail to find any expression in any opinion of this Court wherein the right is given him to object to being further held after he has been taken to the demanding State.

The fact of the Governor of either State having acted wrongfully or in collusion would, we urge, cut no figure whatsoever.

In the case of People vs. Pratt, 78 California, 349, the Governor of that State was charged with official wrong doing in connection with the extradition of a person charged with crime in that State, but who was at the time in Japan. The Supreme Court of that State, in passing upon the matter, said:

"The arguments of the defendant to the effect that the "State is bound in law and good morals to have this de-"fendant released, and that her Courts should so hold, "strikes us as being without force. The Governor evident-"ly actuated by the motive that one charged with a high

"crime should have meted out to him just punishment, "may have taken steps to bring him before the bar of a "court of justice having jurisdiction of the offense which "are not warranted by law, *but that is a matter personal "to the Governor with which neither the commonwealth "nor the courts have any concern.*"

We urge that the reasoning in the California case applies directly here, and the decision cited fully answers the contention of appellants in this regard.

Counsel for appellants in their brief make extended comment upon the decisions of this Court in People vs. Hyatt, 188 U. S. 691, and Munsey vs. Cluff, 196 U. S. 364, and claim these cases are in point, and sustain their contention. Such is not the case. In each of those cases the party demanded commenced habeas corpus proceedings in the surrendering State, and in neither of those cases was the person charged with crime taken to the demanding State. Such being the case, it necessarily followed that the persons charged could interpose the fact that they were not in the demanding State at the time of the commission of the offense, or any other defense they might see fit to urge, and the courts of the surrendering State would be privileged, in fact, it would be their duty, to consider such defense. These decisions, however, ceased to be authority, as we understand them, so far as the cases at bar are concerned, by reason of the fact that the writ was invoked in the surrendering State, instead of the demanding State. Ex parte Reggel, 114 U. S. 642, and a number of the authorities cited by the learned counsel, are also based on a state of affairs similar to those existing in People vs. Hyatt, and Munsey vs. Cluff, *supra,* and, therefore, cease

to be authority so far as the real points in this controversy are concerned.

In fact, the underlying theory in most of the cases wherein proceedings have been commenced looking to release in the demanding State of a person charged with crime, forcibly taken there without process, seem to be, that the party charged has no remedy, but that the State from which the party charged has been taken alone has cause of complaint. It is the indignity put upon the State, not the outrage upon the individual, that can be successfully urged in legal proceedings; and, as we take it, no injustice by reason of such being the law would be worked upon any individual; if a person innocent of crime is forcibly abducted from one State and taken to another and there tried, his innocence will be established at such trial, and he will have his right of action against those engaged in the abduction, and could also invoke the criminal law of the State from whence he was taken for the punishment of those who had abducted him. Thus the rights of an innocent man who had been mistreated in such manner would be protected and those who had worked the injury upon him would be properly punished. If, on the contrary, the person abducted when brought to trial was proven guilty, there surely would be little opportunity of urging that he had been mistreated, and no right-minded person would, we opine, feel any particular sympathy with the criminal by reason of the methods used in bringing him to the bar of justice. The criminal would have no cause of complaint in such case, because the injustice done him was caused by his own act in committing the crime charged; the primary object of the law in such cases being to punish those guilty of public offenses, the

metod of bringing them to the place of trial would cut no material figure in regard to the real question involved—that of the guilt or innocence of the accused; and while even a guilty man might under such circumstances be privileged to invoke the civil law, and mulct his abductors in damages, and while such abductors could be punished in criminal actions in the State in which the abduction was made, still, such abduction would not, under any circumstances, as we view it in the light of the decisions, be a defense that could be interposed in behalf of the person taken; nor could it be used as a shield to be interposed between a guilty person so charged, and the punishment which his crime made proper to be inflicted upon him.

In such a case it is not, as we take it from the decisions, an invasion of the rights of the individual that is the important point, because the individual has his remedy; but it is the indignity put upon the State from which he was taken that is the important matter. It surely would be impossible for any right-minded person to waste much sympathy upon a man convicted of a serious offense against the laws by reason of the fact that the officers of the law had adopted extraordinary or even unlawful methods in bringing him before the courts of justice.

Counsel for appellants seem to realize that an abduction by a private individual can not be urged in the State to which he is taken as a ground for the release of the person charged, but endeavor to draw a distinction between cases where a party has been abducted or kidnaped by private individuals and one where he has been unlawfully taken from the surrendering State by reason of the unlawful acts of officers entrusted with the execution of the law. No such distinction, we urge, can be drawn. The State can

not be made responsible for the unlawful acts of its officers in such case. As was said in People vs. Pratt, *supra*, such act "is a matter personal to the Governor, with which neither the commonwealth nor the courts have any concern." In other words, as we take it, the Governor of a State who unlawfully engages in the abduction or forcible removal of persons charged with crime, either from his State or to his State, would, like any other individual, be responsible in damages to the party injured, but his unlawful action would in nowise be binding upon the State, nor could any other relief be extended to the person abducted, because he as Governor engaged in an unlawful enterprise, than would be granted if the acts of such executive were done by a private person.

Having, we believe, fully answered all of the material matters urged in appellants' brief, and shown that there is nothing in these cases before the Court that should cause this Court to depart from the well established rules governing cases of this kind, we ask that the action of the Supreme Court of the State of Idaho, and of the Circuit Court of the United States for the District of Idaho be sustained, and that the asked for relief be refused.

Respectfully submitted,

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JAMES H. HAWLEY,

Counsel for Respondent and Defendant in Error.

Supreme Court of the United States.

No. 249.—October Term, 1906.

George A. Pettibone, Appellant, vs. Jasper C. Nichols, Sheriff. } Appeal from the Circuit Court of the United States for the District of Idaho.

[December 3d 1906.]

Mr. Justice Harlan delivered the opinion of the Court.

This is an appeal from a judgment of the Circuit Court of the United States for the District of Idaho refusing, upon *habeas corpus*, to discharge the appellant who alleged that he was held in custody by the Sheriff of Canyon County, in that State, in violation of the Constitution and laws of the United States.

It appears that on the 12th day of February 1906 a criminal complaint verified by the oath of the Prosecuting Attorney of that county, and charging Pettibone with having murdered Frank Steunenberg at Caldwell, Idaho, on the 30th day of December 1905, was filed in the office of the Probate Judge. Thereupon, a warrant of arrest based upon that complaint having been issued application was made to the Governor of Idaho for a requisition upon the Governor of Colorado (in which State the accused was alleged then to be) for the arrest of Pettibone and his delivery to the agent of Idaho, to be conveyed to the latter State and there dealt with in accordance with law. The papers on which the Governor of Idaho based his requisition distinctly charged that Pettibone was in that State at the time Steunenberg was murdered and was a fugitive from its justice.

A requisition by the Governor of Idaho was accordingly issued and was duly honored by the Governor of Colorado, who issued a warrant commanding the arrest of Pettibone and his delivery to the authorized agent of Idaho, to be conveyed to the latter State. Pettibone was arrested under that warrant and carried to Idaho by its agent, and was there delivered by order of the Probate Judge into the custody of the Warden of the State Penitentiary, the jail of the county being deemed at that time an unfit place.

On the 23d day of February 1906 Pettibone sued out a writ of *habeas corpus* from the Supreme Court of Idaho. The Warden made a return, stating the circumstances under which the accused came into his custody, and also that the charge against Pettibone was then under investigation by

the grand jury. To this return the accused made an answer embodying the same matters as were alleged in the application for the writ of *habeas corpus*, and charging, in substance, that his presence in Idaho had been procured by connivance, conspiracy and fraud on the part of the executive officers of Idaho, and that his detention was in violation of the provisions of the Constitution of the United States and of the act of Congress relating to fugitives from justice.

Subsequently, March 7th 1906, the grand jury returned an indictment against Pettibone, William D. Haywood, Charles H. Moyer and John L. Simpkins, charging them with the murder of Steunenberg on the 30th of December 1905, at Caldwell, Idaho. Having been arrested and being in custody under that indictment, the officer holding Pettibone made an amended return stating the fact of the above indictment and that he was then held under a bench warrant based thereon.

At the hearing before the Supreme Court of the State the officers having Pettibone in custody moved to strike from the answer of the accused all allegations relating to the manner and method of obtaining his presence within the State. That motion was sustained March 12th 1906, and the prisoner was remanded to await his trial under the above indictment. The Supreme Court of Idaho held the action of the Governor of Colorado to be at least *quasi judicial* and, in effect, a determination that Pettibone was charged with the commission of a crime in the latter State and was a fugitive from its justice; that after the prisoner came within the jurisdiction of the demanding State he could not raise in its courts the question whether he was or had been as a matter of fact a fugitive from the justice of that State; that the courts of Idaho had no jurisdiction to inquire into the acts or motives of the executive of the State delivering the prisoner; that "one who commits a crime against the laws of a State, whether committed by him while in person on its soil or *absent in a foreign jurisdiction and acting through some other agency or medium*, has no vested right of asylum in a sister State," and the fact "that a wrong is committed against him in the manner or method pursued in subjecting his person to the jurisdiction of the complaining State, and that such wrong is redressible either in the civil or criminal courts, can constitute no legal or just reason why he himself should not answer the charge against him when brought before the proper tribunal." *Ex parte Pettibone*, 85 *Pac.* 902; *Ex parte Moyer*, 85 *Ib.* 897.

From the judgment of the Supreme Court of Idaho a writ of error was prosecuted to this court. That case is No. 265 on the docket of the present term, but the record has not been printed. But the parties agree that the same questions are presented on this appeal as arise in that case, and as this case is one of urgency in the affairs of a State, we have

acceded to the request that they may be argued and determined on this appeal.

On the 15th of March 1906, after the final judgment in the Supreme Court of Idaho, Pettibone made application to the Circuit Court of the United States, sitting in Idaho, for a writ of *habeas corpus*, alleging that he was restrained of his liberty by the Sheriff of Canyon County in violation of the Constitution and laws of the United States. As was done in the Supreme Court of Idaho, the accused set out numerous facts and circumstances which, he contended, showed that his personal presence in Idaho was secured by fraud and connivance on the part of the executive officers and agents of both Idaho and Colorado, in violation of the constitutional and statutory provisions relating to fugitives from justice. Consequently, it was argued, the court in Idaho did not acquire jurisdiction over his person. The officer having Pettibone in custody made return to the writ that he then held the accused under the bench warrant issued against him. It was stipulated that the application for the writ of *habeas corpus* might be taken as his answer to the return. Subsequently, on motion, that answer was stricken out by the Circuit Court as immaterial, the writ of *habeas corpus* was quashed, and Pettibone was remanded to the custody of the State.

As the application for the writ of *habeas corpus* was, by stipulation of the parties, taken as the answer of the accused to the return of the officer holding him in custody, and as that answer was stricken out by the court below as immaterial, we must, on this appeal, regard as true all the facts sufficiently alleged in the application which, in a legal sense, bear upon the question whether the detention of the accused by the State authorities was in violation of the Constitution or laws of the United States.

That application is too lengthy to be incorporated at large in this opinion. It is sufficient to say that its allegations present the case of a conspiracy between the Governors of Idaho and Colorado, and the respective officers and agents of those States, to have the accused taken from Colorado to Idaho under such circumstances and in such way as would deprive him, while in Colorado, of the privilege of invoking the jurisdiction of the courts there for his protection against wrongful deportation from the State—it being alleged that the Governor of Idaho, the Prosecuting Attorney of Canyon County, and the private counsel who advised them well knew all the time that "he was not in the State of Idaho on the 30th day of December 1905, nor at any time near that date." The application also alleged that the accused "is not and was not a fugitive from justice; that he was not present in the State of Idaho when the alleged crime was alleged to have been committed, nor for months prior thereto, nor thereafter, until brought into the State as aforesaid."

In the forefront of this case is the fact that the appellant is held in actual custody for trial under an indictment in one of the courts of Idaho for the crime of murder charged to have been committed in that State against its laws, and it is the purpose of the State to try the question of his guilt or innocence of that charge.

Undoubtedly, the Circuit Court had jurisdiction to discharge the appellant from the custody of the State authorities if their exercise of jurisdiction over his person would be in violation of any rights secured to him by the Constitution or laws of the United States. But that court had a discretion as to the time and mode in which, by the exercise of such power, it would by its process obstruct or delay a criminal prosecution in the State court. The duty of a Federal court, to interfere, on *habeas corpus*, for the protection of one alleged to be restrained of his liberty in violation of the Constitution or laws of the United States must often be controlled by the special circumstances of the case, and unless in some emergency demanding prompt action, the party held in custody by a State and seeking to be enlarged will be left to stand his trial in the State court which, it will be assumed will enforce—as it has the power to do equally with a court of the United States, *Robb* v. *Connolly*, 111 *U. S.* 624, 637—any right secured by the Supreme law of the land. "When the State court," this court has said, "shall have finally acted upon the case, the Circuit Court has still a discretion whether, under all the circumstances then existing, the accused, if convicted, shall be put to his writ of error from the highest court of the State, or whether it will proceed, by writ of *habeas corpus*, summarily to determine whether the petitioner is restrained of his liberty in violation of the Constitution of the United States." *Ex parte Royall*, 117 *U. S.* 241, 251–253. To the same effect are numerous cases in this court, among which may be named *Ex parte Fonda*, 117 *U. S.* 516; *New York* v. *Eno*, 155 *U. S.* 89, 93; *Cook* v. *Hart*, 146 *U. S.* 183, 192; *Minnesota* v. *Brundage*, 180 *U. S.* 499, 501; *Reid* v. *Jones*, 187 *U. S.* 153; *Riggins* v. *United States*, 199 *U. S.* 547, 549. This rule firmly established for the guidance of the courts of the United States is applicable here, although it appears that the Supreme Court of Idaho has already decided some of the questions now raised. But the question of Pettibone's guilt of the crime of having murdered Steunenberg has not, however, been finally determined and cannot be except by a trial under the laws and in the courts of Idaho. If he should be acquitted by the jury, then no question will remain as to a violation of the Constitution and laws of the United States by the methods adopted to secure his personal presence within the State of Idaho.

The appellant, however, contends that the principle settled in *Ex parte Royall* and other like cases can have application only where the State has legally acquired jurisdiction over the person of the accused, and cannot

apply when, as is alleged to be the case here, his presence in Idaho was obtained by fraud and by a violation of rights guaranteed by the Constitution and laws of the United States. Under such circumstances, it is contended, no jurisdiction could legally attach for the purpose of trying the accused under the indictment for murder.

In support of this view we have been referred to that clause of the Constitution of the United States providing that if "a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." *Art.* 4, § 2; also, to section 5278 of the Revised Statutes, in which it is provided that "whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory."

Looking, first, at what was alleged to have occurred in the State of Colorado touching the arrest of the petitioner and his deportation from that State, we do not perceive that anything done there, however hastily or inconsiderately done, can be adjudged to be in violation of the Constitution or laws of the United States. We pass by both as immaterial and inappropriate any consideration of the motives that induced the action of the Governor of Colorado. This court will not inquire as to the motives which guided the Chief Magistrate of a State when executing the functions of his office. Manifestly, whatever authority may have been conferred upon the Governor of Colorado by the Constitution or laws of his State, he was not required, indeed, was not authorized by the Constitution or laws of the United States to have the petitioner arrested, unless within the meaning of such Constitution and laws he was a fugitive from the justice of Idaho. Therefore he would not have violated his duty if it had been made a condition of surrendering the petitioner that evidence be furnished that he was a

fugitive from justice within the meaning of the Constitution of the United States. Upon the Governor of Colorado rested the responsibility of determining, in some proper mode, what the fact was. But he was not obliged to demand proof of such fact by evidence apart from the requisition papers. As those papers showed that the accused was regularly charged by indictment with the crime of murder committed in Idaho and was a fugitive from its justice, the Governor of Colorado was entitled to accept such papers, coming as they did from the Governor of another State, as *prima facie* sufficient for a warrant of arrest. His failure to require independent proof of the fact that petitioner was a fugitive from justice cannot be regarded as an infringement of any right of the petitioner under the Constitution or laws of the United States. *Ex parte Reggel*, 114 *U. S.* 642, 652, 653. In *Munsey* v. *Clough*, 196 *U. S.* 364, 372, this court said that the issuing of a warrant of arrest by the Governor of the surrendering State, "with or without a recital therein that the person demanded is a fugitive from justice, must be regarded as sufficient to justify the removal, until the presumption in favor of the legality and regularity of the warrant is overthrown by contrary proof in a legal proceeding to review the action of the Governor. *Roberts* v. *Reilly, supra; Hyatt* v. *Cockran*, 188 *U. S.* 691." See also *In Re Keller*, 28 *Fed. Rep.* 681, 686.

But the petitioner contends that his arrest and deportation from Colorado was, by fraud and connivance, so arranged and carried out as to deprive him of an opportunity to prove, before the Governor of that State, that he was not a fugitive from justice, as well as opportunity to appeal to some court in Colorado to prevent his illegal deportation from its territory. If we should assume, upon the present record, that the facts are as alleged, it is not perceived that they make a case of the violation of the Constitution or laws of the United States. It is true, as contended by the petitioner, that if he was not a fugitive from justice, within the meaning of the Constitution, no warrant for his arrest could have been properly or legally issued by the Governor of Colorado. It is equally true that, even after the issuing of such a warrant, before his deportation from Colorado, it was competent for a court, Federal or State, sitting in that State, to inquire whether he was, in fact, a fugitive from justice, and if found not to be to discharge him from the custody of the Idaho agent and prevent his deportation from Colorado. *Robb* v. *Connolly*, 111 *U. S.* 624, 639; *Ex parte Reggel, supra; Hyatt* v. *Cockran*, 188 *U. S.* 691, 719; *Munsey* v. *Clough*, 196 *U. S.* 364, 374. But it was not shown by proof before the Governor of Colorado that the petitioner, alleged in the requisition papers to be a fugitive from justice, was not one, nor was the jurisdiction of any court sitting in that State invoked to prevent his being taken out of the State and carried to Idaho. That he had no reasonable opportunity to present these facts

before being taken from Colorado constitutes no legal reason why he should be discharged from the custody of the Idaho authorities. No obligation was imposed *by the Constitution or laws of the United States* upon the agent of Idaho to so time the arrest of the petitioner and so conduct his deportation from Colorado, as to afford him a convenient opportunity, before some judicial tribunal sitting in Colorado, to test the question whether he was a fugitive from justice and as such liable, under the act of Congress, to be conveyed to Idaho for trial there. In England, in the case of one arrested for the purpose of deporting him to another country, it is provided that there shall be no surrender of the accused to the demanding country until after the expiration of a specified time from the arrest, during which period the prisoner has an opportunity to institute *habeas corpus* proceedings. *Extradition Act of* 1870, 33 *and* 34 *Vict. c.* 52, § 11; 2 *Butler on the Treaty-Making Power*, § 436; 1 *Moore on Extradition*, 741, 742. There is no similar act of Congress in respect of a person arrested in one of the States of the Union as a fugitive from the justice of another State. The speediness, therefore, with which the Idaho agent removed the accused from Colorado cannot be urged as a violation of a constitutional right and constitutes no legal reason for discharging him from the custody of the State of Idaho.

We come now to inquire whether the petitioner was entitled to his discharge upon making proof in the Circuit Court of the United States, sitting in Idaho, that he was brought into that State as a fugitive from justice when he was not, in fact, such a fugitive. Of course, it cannot be contended that the Circuit Court, sitting in Idaho, could rightfully discharge the petitioner upon proof simply that he did not commit the crime of murder charged against him. His guilt or innocence of that charge is within the exclusive jurisdiction of the Idaho State court. The constitutional and statutory provisions referred to were based upon the theory that, as between the States, the proper place for the inquiry into the question of the guilt or innocence of an alleged fugitive from justice is in the courts of the State where the offense is charged to have been committed. The question therefore in the court below was not whether the accused was guilty or innocent, but whether the Idaho court could properly be prevented from proceeding in the trial of that issue, upon proof being made in the Circuit Court of the United States, sitting in that State, that the petitioner was not a fugitive from justice and not liable, in virtue of the Constitution and laws of the United States, to arrest in Colorado under the warrant of its Governor and carried into Idaho. As the petitioner is within the jurisdiction of Idaho, and is held by its authorities for trial, are the particular methods by which he was brought within her limits at all material in the proceeding by *habeas corpus*?

It is contended by the State that this question was determined in its favor by the former decisions of this court. This is controverted by the petitioner, and we must therefore, and particularly because of the unusual character of this case and the importance of the questions involved, see what this court has heretofore adjudged.

In *Ker* v. *Illinois*, 119 *U. S.* 436, it appeared that at the trial in an Illinois court of a person charged with having committed a crime against the laws of that State, the accused sought by plea in abatement to defeat the jurisdiction of the court upon the ground that, in violation of law, he had been seized in Peru and forcibly brought against his will into the United States and delivered to the authorities of Illinois; all of which the accused contended was in violation not only of due process of law as guaranteed by the Fourteenth Amendment, but of the treaty between the United States and Peru negotiated in 1870 and proclaimed in 1874. One of the articles of that treaty bound the contracting countries, upon a requisition by either country, to deliver up to justice persons who, being accused or convicted of certain named crimes committed within the jurisdiction of the requiring party, should seek an asylum or should be found within the territories of the other, the fact of the commission being so established "as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and commitment for trial if the crime had been there committed." 18 *Stat.* 719, 720. The plea stated, among other things, that the defendant protested against his arrest and was refused opportunity from the time of his being seized in Peru until he was delivered to the authorities of Illinois of communicating with any person or seeking any advice or assistance in regard to procuring his release by legal process or otherwise.

The court overruled the plea of abatement, and the trial in the State court proceeded, resulting in a verdict of guilty. The judgment was affirmed by the Supreme Court of Illinois, and this court affirmed, upon writ of error, the judgment of the latter court. It was held by the unanimous judgment of this court that, so far as any question of Federal right was involved, no error was committed by the State court; and that, notwithstanding the illegal methods pursued in bringing the accused within the jurisdiction of Illinois, his trial in the State court did not involve a violation of the due process clause of the Constitution, nor any article in the treaty with Peru, although the case was a clear one "of kidnapping within the dominion of Peru, without any pretence of authority under the treaty or from the Government of the United States." The principle upon which the judgment rested was that, when a criminal is brought or is in fact within the jurisdiction and custody of a State, charged with a crime against its laws, the State may, *so far as the Constitution and laws of*

the United States are concerned, proceed against him for that crime, and need not inquire as to the particular methods employed to bring him into the State. The case, the court said, "does not stand, when the party is in court, and required to plead to an indictment, as it would have stood upon a writ of *habeas corpus* in California, or in any State through which he was carried in the progress of the extradition, to test the authority by which he was held." In meeting the contention that the accused Ker, by virtue of the treaty with Peru, acquired by his residence a right of asylum, this court said: "There is no language in this treaty, or in any other treaty made by this country on the subject of extradition, of which we are aware, which says in terms that a party fleeing from the United States to escape punishment for crime becomes thereby entitled to an asylum in the country to which he has fled; indeed, the absurdity of such a proposition would at once prevent the making of a treaty of that kind. . . . It is idle, therefore, to claim that, either by express terms or by implication, there is given to a fugitive from justice in one of these countries any right to remain and reside in the other; and if the right of asylum means anything, it must mean this. The right of the government of Peru voluntarily to give a party in Ker's condition an asylum in that country is quite a different thing from the right in him to demand and insist upon security in such an asylum. The treaty, so far as it regulates the right of asylum at all, is intended to limit this right in the case of one who is proved to be a criminal fleeing from justice, so that, on proper demand and proceedings had therein, the government of the country of the asylum shall deliver him up to the country where the crime was committed. And to this extent, and to this alone, the treaty does regulate or impose a restriction upon the right of the government of the country of the asylum to protect the criminal from removal therefrom. . . We think it very clear, therefore, that, in invoking the jurisdiction of this court upon the ground that the prisoner was denied a right conferred upon him by a treaty of the United States, he has failed to establish the existence of any such right."

If Ker, by virtue of the treaty with Peru, and because of his forcible and illegal abduction from that country did not acquire an exemption from the criminal process of the courts of Illinois, whose laws he had violated, it is difficult to see how Pettibone acquired, by virtue of the Constitution and laws of the United States, an exemption from prosecution by the State of Idaho, which has custody of his person.

An instructive case on this subject is *Mahon* v. *Justice*, 127 *U. S.* 700. The Governor of Kentucky made a requisition upon the Governor of West Virginia for Mahon, who was charged with the crime of murder in Kentucky, and was alleged to have fled from its jurisdiction and taken refuge in West Virginia. While the two Governors were in correspond-

ence on the subject a body of armed men, without warrant or other legal process, arrested Mahon in West Virginia, and by force and against his will conveyed him out of West Virginia and delivered him to the jailor of Pike County, Kentucky, in the courts of which he stood indicted for murder. Thereupon the Governor of West Virginia, on behalf of that State, applied to the District Court of the United States for the Kentucky District for a writ of *habeas corpus* and his return to the jurisdiction of West Virginia. This court, after observing that the States of the Union were not absolutely sovereign and could not declare war or authorize reprisals on other States, and that their ability to prevent the forcible abduction of persons from their territory consists solely in their power to punish all violations of their criminal laws committed within it, whether by their own citizens or by citizens of other States, said: "If such violators have escaped from the jurisdiction of the State invaded, their surrender can be secured upon proper demand on the executive of the State to which they have fled. The surrender of the fugitives in such cases to the State whose laws have been violated, is the only aid provided by the laws of the United States for the punishment of depredations and violence committed in one State by intruders and lawless bands from another State. The offenses committed by such parties are against the State; and the laws of the United States merely provide the means by which their presence can be secured in case they have fled from its justice. No mode is provided by which a person unlawfully abducted from one State to another can be restored to the State from which he was taken, if held upon any process of law for offenses against the State to which he has been carried. If not thus held he can, like any other person wrongfully deprived of his liberty, obtain his release on *habeas corpus*. Whether Congress might not provide for the compulsory restoration to the State of parties wrongfully abducted from its territory upon application of the parties, or of the State, and whether such provision would not greatly tend to the public peace along the borders of the several States, are not matters for present consideration. It is sufficient now that no means for such redress through the courts of the United States have as yet been provided. The abduction of Mahon by Phillips and his aids was made, as appears from the return of the respondent to the writ, and from the findings of the court below, without any warrant or authority from the Governor of West Virginia. It is true that Phillips was appointed by the Governor of Kentucky as agent of the State to receive Mahon upon his surrender on the requisition; but no surrender having been made, the arrest of Mahon and his abduction from the State were lawless and indefensible acts, for which Phillips and his aids may justly be punished under the laws of West Virginia. The process emanating from the Governor of Kentucky furnished

no ground for charging any complicity on the part of that State in the wrong done to the State of West Virginia." Again: "It is true, also, that the accused had the right while in West Virginia of insisting that he should not be surrendered to the Governor of Kentucky by the Governor of West Virginia, except in pursuance of the acts of Congress, and that he was entitled to release from any arrest in that State not made in accordance with them; but having been subsequently arrested in Kentucky under the writs issued on the indictments against him, the question is not as to the validity of the proceeding in West Virginia, but as to the legality of his detention in Kentucky. There is no comity between the States by which a person held upon an indictment for a criminal offense in one State can be turned over to the authorities of another, though abducted from the latter. If there were any such comity, its enforcement would not be a matter within the jurisdiction of the courts of the United States. By comity nothing more is meant than that courtesy on the part of one State, by which within her territory the laws of another State are recognized and enforced, or another State is assisted in the execution of her laws. From its nature the courts of the United States cannot compel its exercise when it is refused; it is admissible only upon the consent of the State, and when consistent with her own interests and policy. *Bank of Augusta* v. *Earle*, 13 *Pet.* 519, 589; *Story's Conflict of Law*, § 30. The only question, therefore, presented for our determination is whether a person indicted for a felony in one State, forcibly abducted from another State and brought to the State where he was indicted by parties acting without warrant or authority of law, is entitled under the Constitution or laws of the United States to release from detention under the indictment by reason of such forcible and unlawful abduction."

After a review of the authorities, including the case of *Ker* v. *Illinois*, above cited, the court concluded: "So in this case, it is contended that, because under the Constitution and laws of the United States a fugitive from justice from one State to another can be surrendered to the State where the crime was committed, upon proper proceedings taken, he has the right of asylum in the State to which he has fled, unless removed in conformity with such proceedings, and that this right can be enforced in the courts of the United States. But the plain answer to this contention is, that the laws of the United States do not recognize any such right of asylum, as is here claimed, on the part of a fugitive from justice in any State to which he has fled; nor have they, as already stated, made any provision for the return of parties who, by violence and without lawful authority, have been abducted from a State. There is, therefore, no authority in the courts of the United States to act upon any such alleged right. In *Ker* v. *Illinois*, the court said that the question of how far the

forcible seizure of the defendant in another country, and his conveyance by violence, force or fraud to this country could be made available to resist trial in the State court for the offense charged upon him, was one which it did not feel called upon to decide, for in that transaction it did not see that the Constitution, or laws, or treaties of the United States guaranteed to him any protection. So in this case we say that, whatever effect may be given by the State court to the illegal mode in which the defendant was brought from another State, no right, secured under the Constitution or laws of the United States, was violated by his arrest in Kentucky, and imprisonment there, upon the indictments found against him for murder in that State."

These principles determine the present case and require an affirmance of the judgment of the Circuit Court. It is true the decision in the *Mahon* case was by a divided court, but its authority is none the less controlling. The principle upon which it rests has been several times recognized and reaffirmed by this court, and is no longer to be questioned. It was held in *Cook* v. *Hart*, 146 *U. S.* 183, 192, that the cases of *Ker* v. *Illinois* and *Mahon* v. *Justice* established these propositions: "1. That this court will not interfere to relieve persons who have been arrested and taken by violence from the territory of one State to that of another, where they are held under process legally issued from the courts of the latter State. 2. That the question of the applicability of this doctrine to a particular case is as much within the province of a State court, as a question of common law or of the law of nations, as it is of the courts of the United States;" in *Lascelles* v. *Georgia*, 148 *U. S.* 537, 543, that it was settled in the *Ker* and *Mahon* cases that, "except in the case of a fugitive surrendered by a foreign government, there is nothing in the Constitution, treaties or laws of the United States which exempts an offender, brought before the courts of a State for an offense against its laws, from trial and punishment, even though brought from another State by unlawful violence, or by abuse of legal process;" and in *Adams* v. *New York*, 192 *U. S.* 585, 596, (the same cases being referred to), that "if a person is brought within the jurisdiction of one State from another, or from a foreign country, by the unlawful use of force, which would render the officer liable to a civil action or in a criminal proceeding because of the forcible abduction, such fact would not prevent the trial of the person thus abducted in the State wherein he had committed an offense." See, also, *In Re Johnson*, 167 *U. S.* 120, 127, in which the court recognized the principle that when a party, in a civil suit has, by some trick or device, been brought within the jurisdiction of a court, he may have the process served upon him set aside, but that a different rule prevails in criminal cases involving the public interests.

To the above citations we may add *In re Moore*, 75 *Fed. Rep.* 821, in which it appeared or was alleged that one accused of crime against the laws of a State and in the custody of its authorities for trial, was brought back from another State as a fugitive from justice by means of an extradition warrant procured by false affidavits. In his application to the Circuit Court of the United States for a writ of *habeas corpus* the petition stated facts and circumstances tending to show that he was not a fugitive from justice. The application was dismissed. After stating that the executive warrant issued by the surrendering State had performed its office and that the petitioner was not held in virtue of it, the court said: "His imprisonment is not illegal unless his extradition makes it so, and an illegal extradition is no greater violation of his rights of person than his forcible abduction. If a forcible abduction from another State and conveyance within the jurisdiction of the court holding him is no objection to his detention and trial for the offense charged, as held in *Mahon* v. *Justice*, 127 *U. S.* 712, and in *Ker* v. *Illinois*, 119 *U. S.* 437, no more is the objection allowed if the abduction has been accomplished under the forms of law. The conclusion is the same in each case. The act complained of does not relate to the restraint from which the petitioner seeks to be relieved, but to the means by which he was brought within the jurisdiction of the court under whose process he is held. It is settled that a party is not excused from answering to the State whose laws he has violated because violence has been done him in bringing him within the State. Moreover, if any injury was done in this case in issuing the requisition upon the State of Washington without grounds therefor, the injury was not to the petitioner but to that State whose jurisdiction was imposed upon by what was done. The United States do not recognize any right of asylum in the State where a party charged with a crime committed in another State is found, nor have they made any provision for the return of parties who, by violence and without lawful authority, have been abducted from a State, and whatever effect may be given by a State court to the illegal mode in which a defendant is brought from another State no right secured under the Constitution and laws of the United States is violated by his arrest and imprisonment for crimes committed in the State into which he is brought. *Mahon* v. *Justice*, 127 *U. S.* 715."

The principle announced in the *Mahon* and other cases above cited was not a new one. It has been distinctly recognized in the courts of England and in many States of the Union. In *Ex parte Scott*, 9 *B. & C.* 446 (17 *E. C. L.* 204,) (1829,) one accused of crime against the laws of England, and who was in custody for trial, sought to be discharged upon *habeas corpus* because she had been improperly apprehended in a foreign country. Lord Tenterden, C. J., said: "The question, therefore, is this,

whether if a person charged with a crime is found in this country it is the duty of the court to take care that such a party shall be amenable to justice or whether we are to consider the circumstances under which she was brought here. I thought, and still continue to think, that we can not inquire into them. If the act complained of were done against the law of a foreign country that country might have vindicated its own law. If it gave her a right of action she may sue upon it." Some of the American cases, to the same general effect, are cited in *Mahon* v. *Justice*, namely, *State* v. *Smith*, 1 *Bailey, S. C.* 283; *State* v. *Brewster*, 7 *Vt.* 118; *State* v. *Ross*, 21 *Iowa*, 467. See also *Dow's case*, 18 *Pa. St.* 37; *State* v. *Kealy*, 89 *Iowa*, 94, 97; *Ex parte Barker*, 87 *Ala.* 4, 8; *People* v. *Pratt*, 78 *Cal.* 345, 349; *Church on Habeas Corpus*, § 483, *and authorities cited in notes*, and note to *Fetter's* case, 57 *Amer. Dec.* 389, 400.

It is said that the present case is distinguishable from the *Mahon* case in the fact that the illegal abduction complained of in the latter was by persons who neither acted nor assumed to act under the authority of the State into the custody of whose authorities they delivered Mahon; whereas, in this case, it is alleged that Idaho secured the presence of Pettibone within its limits through a conspiracy on the part of its Governor and other officers. This difference in the cases is not, we think, of any consequence as to the principle involved; for, the question now is—and such was the fundamental question in *Mahon's* case—whether a Circuit Court of the United States when asked, upon *habeas corpus*, to discharge a person held in actual custody by a State for trial in one of its courts under an indictment charging a crime against its laws, can properly take into account the methods whereby the State obtained such custody. That question was determined in the negative in the *Ker* and *Mahon's* cases. It was there adjudged that in such a case neither the Constitution nor laws of the United States entitled the person so held to be discharged from custody and allowed to depart from the State. If, as suggested, the application of these principles may be attended by mischievous consequences, involving the personal safety of individuals within the limits of the respective States, the remedy is with the lawmaking department of the Government. Congress has long been informed by judicial decisions as to the state of the law upon this general subject.

In this connection it may be well to say that we have not overlooked the allegation that the Governor and other officers of Idaho well knew at the time the requisition was made upon the Governor of Colorado, that Pettibone was not in Idaho on December 30th 1905, nor at any time near that date, and had the purpose in all they did to evade the constitutional and statutory provisions relating to fugitives from justice. To say nothing of the impropriety of any such facts being made the subject of judicial

inquiry in a Federal court, the issue thus attempted to be presented was wholly immaterial. Even were it conceded, for the purposes of this case, that the Governor of Idaho wrongfully issued his requisition, and that the Governor of Colorado erred in honoring it and in issuing his warrant of arrest, the vital fact remains that Pettibone is held by Idaho in actual custody for trial under an indictment charging him with crime against its laws, and he seeks the aid of the Circuit Court to relieve him from custody, so that he may leave that State and thereby defeat the prosecution against him without a trial. In the present case it is not necessary to go behind the indictment and inquire as to how it happened that he came within reach of the process of the Idaho court in which the indictment is pending. And any investigation as to the motives which induced the action taken by the Governors of Idaho and Colorado would, as already suggested, be improper as well as irrelevant to the real question to be now determined. It must be conclusively presumed that those officers proceeded throughout this affair with no evil purpose and with no other motive than to enforce the law.

We perceive no error in the action of the Circuit Court and its final order is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 249.—October Term, 1906.

George A. Pettibone, Appellant, vs. Jasper C. Nichols, Sheriff. } Appeal from the Circuit Court of the United States for the District of Idaho.

[December 3, 1906.]

Mr. Justice McKenna dissenting.

I am constrained to dissent from the opinion and judgment of the court. The principle announced, as I understand it, is that "a Circuit Court of the United States, when asked upon *habeas corpus* to discharge a person held in actual custody by a State for trial in one of its courts under an indictment charging a crime against its laws, cannot properly take into account the methods whereby the State obtained such custody." In other words, and to illuminate the principle by the light of the facts in this case, (facts, I mean, as alleged, and which we must assume to be true for the purpose of our discussion,) that the officers of one State may falsely represent that a person was personally present in the State and committed a crime there, and had fled from its justice, may arrest such person and take him from another State, the officers of the latter knowing of the false accusation and conniving in and aiding its purpose, thereby depriving him of an opportunity to appeal to the courts, and that such person cannot invoke the rights guaranteed to him by the Constitution and statutes of the United States in the State to which he is taken. And this, it is said, is supported by the cases of *Ker* v. *Illinois*, (119 U. S. 436,) and *Mahon* v. *Justice*, (127 U. S. 700.) These cases, extreme as they are, do not justify, in my judgment, the conclusion deduced from them. In neither case was the State the actor in the wrongs that brought within its confines the accused person. In the case at bar, the States, through their officers, are the offenders. They, by an illegal exertion of power, deprived the accused of a constitutional right. The distinction is important to be observed. It finds expression in *Mahon* v. *Justice*. But it does not need emphasizing. Kidnapping is a crime, pure and simple. It is difficult to accomplish; hazardous at every step. All of the officers of the law are supposed to be on guard against it. All of the officers of the law may be invoked against it. But how is it when the law becomes the kidnapper, when the officers of the law, using its forms and exerting its power, become abductors? This is not a distinction without a difference—another form of the crime of kidnapping, distinguished only from that committed

by an individual by circumstances. If a State may say to one within her borders and upon whom her process is served, I will not inquire how you came here; I must execute my laws and remit you to proceedings against those who have wronged you, may she so plead against her own offenses? May she claim that by mere physical presence within her borders, an accused person is within her jurisdiction denuded of his constitutional rights, though he has been brought there by her violence? And constitutional rights the accused in this case certainly did have, and valuable ones. The foundation of extradition between the States is that the accused should be a fugitive from justice from the demanding State, and he may challenge the fact by *habeas corpus* immediately upon his arrest. If he refute the fact he cannot be removed. (*Hyatt* v. *Corkran*, 188 U. S. 691.) And the right to resist removal is not a right of asylum. To call it so in the State where the accused is is misleading. It is the right to be free from molestation. It is the right of personal liberty in its most complete sense. And this right was vindicated in *Hyatt* v. *Corkran*, and the fiction of a constructive presence in a State and a constructive flight from a constructive presence rejected. This decision illustrates at once the value of the right and the value of the means to enforce the right. It is to be hoped that our criminal jurisprudence will not need for its efficient administration the destruction of either the right or the means to enforce it. The decision in the case at bar, as I view it, brings us perilously near both results. Is this exaggeration? What are the facts in the case at bar as alleged in the petition, and which it is conceded must be assumed to be true? The complaint, which was the foundation of the extradition proceedings, charged against the accused the crime of murder on the 30th of December, 1905, at Caldwell, in the county of Canyon, State of Idaho, by killing one Frank Steunenberg, by throwing an explosive bomb at and against his person. The accused avers in his petition that he had not been "in the State of Idaho, in any way, shape or form, for a period of more than ten years" prior to the acts of which he complained, and that the Governor of Idaho knew accused had not been in the State the day the murder was committed, "nor at any time near that day." A conspiracy is alleged between the Governor of the State of Idaho and his advisers, and that the Governor of the State of Colorado took part in the conspiracy, the purpose of which was "to avoid the Constitution of the United States and the act of Congress made in pursuance thereof, and to prevent the accused from asserting his constitutional right under clause 2, section 2, of article IV, of the Constitution of the United States and the act made pursuant thereof." The manner in which the alleged conspiracy had been executed was set out in detail. It was in effect that the agent of the State of Idaho arrived in Denver, Thursday, February 15, 1906, but it was agreed between him and the officers of Colorado that the

arrest of the accused should not be made until some time in the night of Saturday, after business hours—after the courts had closed and judges and lawyers had departed to their homes; that the arrest should be kept a secret and the body of the accused should be clandestinely hurried out of the State of Colorado with all possible speed, without the knowledge of his friends or his counsel; that he was at the usual place of business during Thursday, Friday and Saturday, but no attempt was made to arrest him until 11:30 o'clock P. M. Saturday, when his house was surrounded and he arrested. Moyer was arrested under the same circumstances at 8:45, and he and accused "thrown into the county jail of the city and county of Denver." It is further alleged that, in pursuance of the conspiracy between the hours of five and six o'clock on Sunday morning, February 18, the officers of the State and "certain armed guards, being a part of the forces of the militia of the State of Colorado," provided a special train for the purpose of forcibly removing him from the State of Colorado, and between said hours he was forcibly placed on said train and removed with all possible speed to the State of Idaho; that prior to his removal and at all times after his incarceration in the jail at Denver he requested to be allowed to communicate with his friends and his counsel and his family, and the privilege was absolutely denied him. The train, it is alleged, made no stop at any considerable station, but proceeded at great and unusual speed; and that he was accompanied by and surrounded with armed guards, members of the State militia of Colorado, under the orders and directions of the adjutant general of the State.

I submit that the facts in this case are different in kind and transcend in consequences those in the cases of *Ker* v. *Illinois* and *Mahon* v. *Justice*, and differ from and transcend them as the power of a State transcends the power of an individual. No individual or individuals could have accomplished what the power of the two States accomplished; no individual or individuals could have commanded the means and success; could have made two arrests of prominent citizens by invading their homes; could have commanded the resources of jails, armed guards and special trains; could have successfully timed all acts to prevent inquiry and judicial interference.

The accused, as soon as he could have done so, submitted his rights to the consideration of the courts. He could not have done so in Colorado, he could not have done so on the way from Colorado. At the first instant that the State of Idaho relaxed its restraining power he invoked the aid of *habeas corpus* successively of the Supreme Court of the State and of the Circuit Court of the United States. He should not have been dismissed from court, and the action of the Circuit Court in so doing should be reversed.

I also dissent in Nos. 250, 251, 265, 266 and 267.